

## **CHAPTER 10**

### **DEFINITIONS, SERVICE, CONSTRUCTION**

#### **Authority**

N.J.S.A. 34:13A-6(b), 34:13A-5.4(e) and 34:13A-11.

#### **Source and Effective Date**

R.2004 d.278, effective June 24, 2004.

See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

#### **Chapter Expiration Date**

Chapter 10, Definitions, Service, Construction, expires on June 24, 2009.

#### **Chapter Historical Note**

Chapter 10, Definitions, was adopted prior to September 1, 1969.

Subchapter 2, Service and Filing of Papers, Subchapter 3, Construction of Rules, Subchapter 4, Delegation of Authority, and Subchapter 5, Description of Organization, were adopted as R.1977 d.272, effective August 2, 1977. See: 9 N.J.R. 298(a), 9 N.J.R. 448(a).

Subchapter 6, Rulemaking Petitions Filed by Interested Persons, was adopted as R.1989 d.461, effective September 5, 1989. See: 21 N.J.R. 1505(a), 21 N.J.R. 2808(b).

Pursuant to Executive Order No. 66(1978), Chapter 10, Definitions, Service, Construction, was readopted as R.1994 d.437, effective July 28, 1994. See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

Pursuant to Executive Order No. 66(1978), Chapter 10, Definitions, Service, Construction, was readopted as R.1999 d.219, effective June 24, 1999. See: 31 N.J.R. 1168(a), 31 N.J.R. 1941(b).

Chapter 10, Definitions, Service, Construction, was readopted as R.2004 d.278, effective June 24, 2004. See: Source and Effective Date. See, also, section annotations.

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## **SUBCHAPTER 1. DEFINITIONS**

### **19:10-1.1 Definitions**

The following words and terms, when used in this subtitle, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the New Jersey Employer-Employee Relations Act, as amended, (N.J.S.A. 34:13A-1 et seq.).

"Arbitration panel" means a roster of arbitrators maintained by the Commission.

"Arbitrator" means a member of an arbitration panel maintained in accordance

with these rules, including the grievance arbitration panel established by N.J.A.C. 19:12-5 and the special panel of interest arbitrators established pursuant to N.J.S.A. 34:13A-16e and N.J.A.C. 19:16-5.6(a).

"Certification of representative" means the designation by the Commission of an employee organization as the exclusive representative of employees in an appropriate unit.

"Certification of results" means the certification by the Commission of the results of an election conducted by the Commission in which no employee organization received a majority of the valid ballots cast.

"Chairman" means the full-time member of the Public Employment Relations Commission who is its chief executive officer and administrator and is also the chief executive officer and administrator of the Division of Public Employment Relations.

"Commission" means the New Jersey Public Employment Relations Commission.

"Contested transfer proceeding" means a procedure under these rules for determining whether the transfer of an employee between work sites by an "employer" as defined by N.J.S.A. 34:13A-22 was made for disciplinary reasons.

"Craft employee" means any employee who is engaged with helpers or apprentices in a manual pursuit requiring the exercise of craft skills which are normally acquired through a long and substantial period of training or a formal apprenticeship and which in their exercise call for a high degree of judgment and manual dexterity, one or both, and for ability to work with a minimum of supervision. The term shall also include an apprentice or helper who works under the direction of a journeyman craftsman and is in a direct line of succession in that craft.

"Director of Arbitration" means that officer of the Commission designated to act on behalf of the Commission with respect to arbitration procedures contained in N.J.A.C. 19:12 and 19:16.

"Director of Conciliation" means that officer of the Commission designated to act on behalf of the Commission with respect to those matters related to negotiations impasses contained in N.J.A.C. 19:12 and 19:16.

"Director of Representation" means that officer of the Commission designated to act on behalf of the Commission with respect to those matters relating to representation procedures contained in N.J.A.C. 19:11.

"Director of Unfair Practices" means that officer of the Commission designated

to act on behalf of the Commission with respect to those matters relating to unfair practice proceedings contained in N.J.A.C. 19:14.

"Election agent" means that officer of the Commission designated to conduct elections in accordance with the procedures set forth in N.J.A.C. 19:11.

"Fact-finder" means the Commission, any member of the Commission or any officer so designated by the Commission to perform the functions of a fact-finder as set forth in these rules.

"Fact-finding panel" means a roster of fact-finders maintained by the Commission.

"Hearing examiner" means an officer of the Commission designated to conduct any unfair practice, scope of negotiations or contested transfer hearings and to issue a recommended report and decision.

"Hearing officer" means an officer of the Commission designated to conduct any representation hearing and to issue a report and recommendations.

"Mediation panel" means a roster of mediators maintained by the Commission.

"Mediator" means the Commission, its members, employees of the Commission or any officer so designated by the Commission to perform the functions and duties of mediation.

"Officer" means all personnel of the Division of Public Employment Relations or any other individual designated by the Commission to act on the Commission's behalf. The Commission may delegate to such officer all of the powers conferred upon the Commission in connection with the discharge of its duty or duties.

"Party" means any person, employee, group of employees, organization or public employer filing a charge, petition, request or application or other document under these rules; any person, organization or public employer named as a party in a charge, complaint, request, application or petition filed under this act; or any person, organization or public employer whose intervention in a proceeding has been permitted or directed by the Commission, or any designated officer.

"Payroll deduction determination proceeding" means the procedure to determine if the majority representative of a negotiations unit of employees has satisfied the conditions required by N.J.S.A. 34:13A-5.5 to have the Commission order that the public employer initiate payroll deductions of a representation fee in lieu of dues from all unit employees who are not members of the majority representative.

"Professional employee" means any employee whose work is predominantly

intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The Commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

"Recognition" means the written acceptance by a public employer of an employee organization as the exclusive representative of employees in an appropriate unit.

"Representation proceeding" means a procedure under these rules for the purpose of determining the exclusive representative of employees, if any, in an appropriate collective negotiations unit or a question or controversy concerning the representation of public employees for the purpose of collective negotiations, including a question concerning the composition of a unit designated for the purpose of collective negotiations.

"Scope of negotiations proceeding" means a procedure under these rules for the purpose of determining whether a matter in dispute is within the scope of collective negotiations.

"Showing of interest" means a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative or have signed a petition requesting an election for decertification of public employee representative. When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees normally within six months prior to the filing of the petition, authorizing an employee organization to represent such employees for the purpose of collective negotiations; current dues records; an existing or recently expired agreement; or other evidence approved by the director of representation. When requesting decertification, such designations shall consist of written petitions, signed and dated by employees normally within six months prior to the filing of the petition, indicating that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified exclusive representative or by any other employee representative.

"Super conciliator" means a member of the Commission, an officer or employee of the Commission, a member of the Commission's mediation or fact-finding panel, or any other super conciliator approved by the Director of Conciliation to perform the

functions and duties of a super conciliator.

"Unfair practice proceeding" means a procedure under these rules for the purpose of determining whether or not anyone has engaged or is engaging in any unfair practice as set forth in N.J.S.A. 34:13A-5.4(a) and (b).

As amended, R.1974 d.56, effective March 7, 1974.

See: 6 N.J.R. 40(b), 6 N.J.R. 159(a).

Amended by R.1994 d.437, effective September 6, 1994.

See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

Public Notice: Receipt of Petition for Rulemaking.

See: 28 N.J.R. 4533(b).

Public Notice: Action on Petition for Rulemaking.

See: 28 N.J.R. 4534(a).

Public Notice: Action on Petition for Rulemaking.

See: 28 N.J.R. 4680(a).

Amended by R.1999 d.219, effective July 19, 1999.

See: 31 N.J.R. 1168(a), 31 N.J.R. 1941(b).

Rewrote "Arbitrator".

Amended by R.2004 d.278, effective July 19, 2004.

See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

Added "Contested transfer proceeding", "Payroll deduction determination proceeding", and "Super conciliator"; amended "Fact-finder" and "Hearing examiner".

## **SUBCHAPTER 2. SERVICE AND FILING OF PAPERS**

### **19:10-2.1 Time for filing papers; Commission address**

(a) In computing any period of time prescribed by or allowed by these rules or by order of the Commission or officer conducting the proceeding, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computations.

(b) Regarding additional time after service of a Commission document by mail, whenever a party has the right or is required to do some act or take some action within a prescribed period after service of a Commission notice or other paper, and the notice or paper is served by mail, three days shall be added to the prescribed period, provided, however, that three days shall not be added if any extension of such time may have been granted, or if service has been made by facsimile or other

electronic means.

(c) Regarding extensions of time, the Commission or officer having authority to dispose of the matter, may, for good cause shown, extend any time prescribed in these rules.

(d) When these rules require the filing of any paper, the original of such document must be received by the Commission or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

(e) Any filings or other correspondence sent to the Commission by mail should be addressed to:

Public Employment Relations Commission  
PO Box 429  
Trenton, New Jersey 08625-0429

(f) Any filings or other correspondence sent to the Commission by courier or in person should be delivered to:

Public Employment Relations Commission  
495 West State Street  
Trenton, New Jersey 08618

(g) Any filings or other correspondence sent to the Commission by facsimile shall be transmitted to: (609) 777-0089.

Amended by R.1994 d.437, effective September 6, 1994.

See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

Amended by R.1999 d.219, effective July 19, 1999.

See: 31 N.J.R. 1168(a), 31 N.J.R. 1941(b).

In (d), added "of any document necessary to initiate any proceeding within the jurisdiction of the Commission or any officer of the Commission" at the end; and in (f), changed the zip code.

Amended by R.2004 d.278, effective July 19, 2004.

See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

Rewrote (b); added (g).

Administrative Correction

See: 36 N.J.R. 4165(a)

### **19:10-2.2 Form of documents**

(a) Documents other than correspondence shall clearly show the title of the proceeding and the docket number, if any.

(b) The original of each document filed shall be signed by an attorney or representative of record for the party, or by the party, or by an officer of the party and shall contain the address and telephone number of the person signing it.

(c) Except as otherwise provided in these rules, any documents or papers shall be filed with four copies in addition to the original. All matters filed with the Commission shall be printed, typed or otherwise legibly duplicated on letter size paper (8 1/2 inch by 11 inch); copies will be accepted only if they are clearly legible.

Amended by R.1994 d.437, effective September 6, 1994.

See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

Amended by R.2004 d.278, effective July 19, 2004.

See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

Deleted former (b), recodified former (c) as (b), and added a new (c).

### **19:10-2.3 Filing by original, facsimile transmission and email**

(a) Originals of the following must be timely filed in person or via mail or courier service:

1. Showings of interest in certification and decertification cases;

2. Petitions to Initiate Compulsory Interest Arbitration, Appeals of Interest Arbitration Awards, and Requests for Special Permission to Appeal Interest Arbitration Rulings, accompanied by the filing fee; and

3. Briefs and appendices in Appeals of Interest Arbitration Awards.

(b) Facsimile transmissions will be accepted in lieu of originals for all submissions except those listed in (a) above.

(c) When filing by facsimile transmission, any requirement under N.J.A.C. 19:11, 19:12, 19:13, 19:14, 19:18 and 19:19 that an original and multiple copies of submissions be filed is waived. However, all original filings and submissions shall be retained by a filing party in its file. Such originals shall be produced upon request.

(d) Except as noted below, all correspondence and submissions, such as briefs and motions, may be sent to [mail@perc.state.nj.us](mailto:mail@perc.state.nj.us) as an attachment to an email describing the attachment and identifying the proceeding or matter to which it pertains. Email may not be used for:

1. Initial case filings;

2. Briefs and appendices in Appeals of Interest Arbitration Awards;



3. Answers; and

4. Certifications and affidavits.

Amended by R.1994 d.437, effective September 6, 1994.

See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

Repeal and New Rule, R.2004 d.278, effective July 19, 2004.

See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

Section was "Service of pleading and other process; proof of service".

#### **19:10-2.4 Service of pleading and proof of service**

(a) Service of papers by a party on other parties may be made personally, or by registered mail, certified mail, regular mail, or by private delivery service, or by facsimile transmission.

(b) Service upon an attorney or representative of record for the party shall constitute service upon the party.

New Rule, R.2003 d.62, effective February 3, 2003.

See: 34 N.J.R. 3171(a), 35 N.J.R. 630(a).

Repeal and New Rule, R.2004 d.278, effective July 19, 2004.

See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

Section was "Electronic filing program".

#### **19:10-2.5 Electronic filing program**

The Chairman of the Commission shall have authority to initiate via an announcement on the Commission's website [www.state.nj.us/perc](http://www.state.nj.us/perc) an electronic filing program affecting the filing of certain documents.

New Rule, R.2004 d.278, effective July 19, 2004.

See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

### **SUBCHAPTER 3. CONSTRUCTION OF RULES**

#### **19:10-3.1 Rules to be liberally construed**

(a) Except as stated in (c) below, whenever the Commission or a designated officer finds that unusual circumstances or good cause exists and that strict compliance with the terms of these rules will work an injustice or unfairness, the Commission or such officer shall construe these rules liberally to prevent injustices and to effectuate the purposes of the act (N.J.S.A. 34:13A-1 et seq.).

(b) When an act is required or allowed to be done at or within a specified time, the Commission may at any time, in its discretion, order the period altered where it shall be manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the act (N.J.S.A. 34:13A-1 et seq.).

(c) In accordance with N.J.A.C. 1:1-1.3, the burden of proof shall not be relaxed.

Amended by R.1994 d.437, effective September 6, 1994.

See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

### **19:10-3.2 Application of rules**

Any valid action by parties prior to the effective date of the rules will not be held invalid because of a failure to comply with the procedural requirements set forth herein.

## **SUBCHAPTER 4. DELEGATION OF AUTHORITY**

### **19:10-4.1 Delegation of authority**

When in these rules an act is required or allowed to be done by a specific officer of the Commission, it shall be understood that the specified officer acts as the designated officer of the Commission and has all the powers necessary to permit the discharge of the duty or duties delegated. However, the Commission at all times retains the authority to designate itself or some other officer of the Commission to perform that function in a particular case or as circumstances may require.

## **SUBCHAPTER 5. DESCRIPTION OF ORGANIZATION**

### **19:10-5.1 Description of organization**

(a) The Division of Public Employment Relations is the administrative agency established to implement and administer the provisions of the New Jersey Employer-Employee Relations Act (N.J.S.A. 34:13A-1 et seq.) concerning employer-employee relations in public employment (N.J.S.A. 34:13A-5.1). The New Jersey Public Employment Relations Commission is the body established within the division which has been granted the powers and duties by the act (N.J.S.A. 34:13A-5.2). The Commission is to consist of seven members to be appointed by the Governor, by and with the advice and consent of the Senate. Of such members, two shall be representatives of public employers, two shall be representatives of public employee organizations and three shall be representatives of the public. One of the public members is appointed as the full-time chairman and is the chief executive officer of the Commission and the division (N.J.S.A. 34:13A-5.2).

(b) The staff of the Commission consists of the personnel of the Division of the Public Employment Relations, all of whom have been designated officers of the Commission (N.J.A.C. 19:10-1.1). The division is divided into four general sections--arbitration, conciliation, representation and unfair practices, which correspond to the three main areas of responsibility delegated to the Commission by the Act. (See N.J.S.A. 34:13A-6(b); N.J.S.A. 34:13A-6(d); and N.J.S.A. 34:13A-5.4(c), respectively.) The Commission has designated a staff member to be the director of each section and has delegated to that officer the powers conferred on the Commission in connection with the duties delegated in the appropriate chapters of these rules. See N.J.A.C. 19:10-1.1 for the definition of Director of Arbitration; Director of Conciliation; Director of Representation; and Director of Unfair Practices. Any additional areas of statutory responsibility are administered under the direct supervision of the chairman.

(c) The staff of the Commission also includes a full-time general counsel and one or more deputies who render legal advice with respect to Commission matters, and represent the Commission in judicial proceedings pursuant to special counsel appointments under N.J.S.A. 52:17A-13. Additionally, the chairman of the Commission is assisted in the performance of his or her duties, particularly in the area of scope of negotiations proceedings, by an individual designated by the Commission as the special assistant to the chairman.

(d) The division, including the Commission, is located in Trenton and the public may obtain information with regard to the functions and proceedings of the Commission at the offices of the Commission, on the Commission's Web site [www.state.nj.us/perc](http://www.state.nj.us/perc) or by writing to the New Jersey Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

Amended by R.1994 d.437, effective September 6, 1994.

See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

Amended by R.2004 d.278, effective July 19, 2004.

See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

Rewrote (b) and (d).

## **SUBCHAPTER 6. RULEMAKING PETITIONS FILED BY INTEREST PERSONS**

### **19:10-6.1 Rulemaking in general**

The Commission shall pre-propose, propose, adopt, readopt, and amend rules and shall accept, process and act upon petitions filed by any interested person seeking the adoption, amendment or repeal of rules, in accordance with the Administrative Procedure Act and in conformance with the procedures adopted by the Office of Administrative Law to implement that act as set forth in N.J.A.C. 1:30.

New Rule, R.2003 d.63, effective February 3, 2003.

See: 34 N.J.R. 3172(a), 35 N.J.R. 630(b).

Former N.J.A.C. 19:10-6.1, Rulemaking petition procedures, recodified to N.J.A.C. 19:10-6.5.

#### **19:10-6.2 Comments to be in writing; extension of period for public comment**

(a) Persons or entities seeking to submit comments on rule proposals shall make their submissions in writing to the Commission or to the individual designated to receive comments in the notice of rule proposal.

(b) The public comment period for any rule proposed by the Commission shall be extended for a period of 30 additional days when a written request for such extension is filed with the Commission within 30 days of publication of the proposal and when sufficient public interest exists. Such interest shall be demonstrated by the filing of requests for an extension by:

1. Ten or more interested persons;
2. Any organization representing the interests of three or more public employers; or
3. An employee organization, or its state or national affiliate, which is:
  - i. The recognized or certified representative of more than 100 New Jersey public employees; or
  - ii. The recognized or certified representative of three or more negotiations units of public employees.

New Rule, R.2003 d.63, effective February 3, 2003.

See: 34 N.J.R. 3172(a), 35 N.J.R. 630(b).

#### **19:10-6.3 Additional notice of rulemaking activity**

(a) The Commission shall provide at least 30 days notice of all proposed rulemaking. Notice shall be provided in the following manner:

1. Publication in the New Jersey Register;
2. Distribution of a notice or statement of the substance of the proposed rulemaking activity to the news media maintaining a press office in the New Jersey State House Complex;

3. Posting a copy of the proposal on the Commission's website at [www.perc.state.nj.us](http://www.perc.state.nj.us);

4. Posting a copy of the proposal in the lobby of the Commission's office at 495 West State Street, Trenton, New Jersey; and

5. Mailing a "Notice to Interested Persons" describing the rule proposal to a distribution list of persons and organizations who regularly use the Commission's services and are likely to have an interest in any rulemaking activity undertaken by the Commission and advising that a copy of the proposal may be viewed on the Commission's website or may be obtained from the Commission by written request.

(b) Notice may also be provided through publication in the New Jersey Law Journal, New Jersey Lawyer, or other appropriate publication.

New Rule, R.2003 d.63, effective February 3, 2003.

See: 34 N.J.R. 3172(a), 35 N.J.R. 630(b).

#### **19:10-6.4 Public hearings**

(a) On receipt of a written request within 30 days following publication of the proposed rule in the New Jersey Register, the Commission shall conduct a public hearing on a proposed rule if:

1. A public hearing is requested by a committee of the Legislature;

2. A public hearing is requested by a governmental agency or subdivision;

or

3. Sufficient public interest in a hearing exists. Such interest shall be demonstrated by the filing of requests for a hearing by:

i. Ten or more interested persons;

ii. Any organization representing the interests of three or more public employers; or

iii. An employee organization, or its state or national affiliate, which is:

(1) The recognized or certified representative of more than 100 New Jersey public employees; or

(2) The recognized or certified representative of three or more negotiations units of public employees.

New Rule, R.2003 d.63, effective February 3, 2003.  
See: 34 N.J.R. 3172(a), 35 N.J.R. 630(b).

### **19:10-6.5 Rulemaking petition procedures**

(a) Any interested person may petition the Commission to make, amend or repeal any rule. The petition must be written and signed by the petitioner.

(b) The petitioner shall state the following information clearly and concisely:

1. The name of the person making the request;
  2. That person's interest in the request, including any relevant organizational affiliation;
  3. The substance or nature of the rulemaking requested;
  4. The proposed text of the rule;
  5. The reasons for the request;
  6. The statutory authority for the Commission to take the requested action;
- and
7. Any pertinent law or regulation.

(c) Requests shall be addressed to:

Chair  
Public Employment Relations Commission  
PO Box 429  
Trenton, NJ 08625-0429

(d) Within 15 days of receiving the petition, the Commission shall file with the Office of Administrative Law the notice of petition required by N.J.A.C. 1:30-4.1(c).

(e) The petition shall be provided to the Commission at the next monthly meeting after filing.

(f) Within 60 days of receiving that petition, the Commission shall:

1. Deny the petition, in which case the Commission shall provide a written statement of its reasons to the petitioner, and include such reasons in its notice of action;

2. Grant the petition and initiate a rulemaking proceeding within 90 days of the granting of the petition; or

3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude within 90 days of such referral.

Petition for Rulemaking.

See: 31 N.J.R. 4348(b), 32 N.J.R. 329(a).

Recodified from N.J.A.C. 19:10-6.1 and amended by R.2003 d. 63, effective February 3, 2003.

See: 34 N.J.R. 3172(a), 35 N.J.R. 630(b).

In (b), inserted "information" preceding "clearly" in the introductory paragraph, rewrote 7.

## **CHAPTER 11**

### **REPRESENTATION PROCEDURES**

#### **Authority**

N.J.S.A. 34:13A-11.

#### **Source and Effective Date**

R.2000 d.320, effective July 14, 2000.

See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

Executive Order No. 66(1978) Expiration Date

Chapter 11, Representation Procedures, expires on July 14, 2005.

#### **Chapter Historical Note**

Chapter 11, Representation Procedures, was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 11, Representation Procedures, was readopted as R.1995 d.488, effective August 8, 1995. See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Pursuant to Executive Order No. 66(1978), Chapter 11, Representation Procedures, was readopted as R.2000 d.320, effective July 14, 2000. See: Source and Effective Date. See, also, section annotations.

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#### **SUBCHAPTER 1. REPRESENTATION PETITIONS**

##### **19:11-1.1 Petitions**

(a) Rules concerning who may file are as follows.

1. A petition for certification of public employee representative (RO) may be filed by any public employee or group of public employees, or by any individual or employee organization claiming to be the exclusive representative of public employees.

2. A petition for certification of public employee representative (RE) may be filed by a public employer alleging that one or more public employees, group of public employees, individuals or employee organizations have presented to such employer a claim to be recognized or continue to be recognized as the exclusive representative and the public employer has a good faith doubt concerning the majority status of the representative of its employees.

3. A petition for decertification of public employee representative (RD) may be filed by any public employee or group of public employees or any individual acting on their behalf alleging that the certified or currently recognized employee representative is no longer the majority representative of such employees and that the employees no longer desire to be represented by any employee representative. A public employer may not file a petition for decertification of public employee representative.

4. A petition for clarification of unit (CU) may be filed by the exclusive representative or public employer.

5. A petition for amendment of certification (AC) may be filed by an employee organization.

(b) An original and four copies of all petitions shall be filed with the Director of Representation. All petitions shall be in writing. The Director of Representation shall serve a copy of the petition upon the other parties. Forms for filing such petitions will be supplied upon request. Address such requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429. Forms may also be downloaded from the Commission's website: <http://www.state.nj.us/perc>

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Amended by R.2000 d.320, effective August 7, 2000.

See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

Rewrote (b).

#### **19:11-1.2 Contents of petition for certification**

(a) A petition for certification of public employee representative filed by a public employee, a group of public employees, any individual, or an employee organization shall contain:

1. The name, address, and telephone number of the public employer and the name and title of the person to contact, if known;

2. A description of the collective negotiations unit claimed to be appropriate for the purpose of exclusive representation by the petitioner. Such description shall indicate the general classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate;

3. The name, address and telephone number of the recognized or certified exclusive representative, if any, and the date of such certification or recognition and the expiration date of any applicable collective negotiations agreement, if known to the petitioner;

4. The names, addresses and telephone numbers of any other interested employee organizations, if known to the petitioner;

5. Any other relevant facts;

6. The name and affiliation, if any, of the petitioner and its address and telephone number;

7. The name, address, title, and telephone number of the petitioner's representative;

8. This dated and signed certification by the petitioner or its representative: "I declare that I have read the above petition and that the information is true to the best of my knowledge and belief."; and

9. A petition for certification of public employee representative shall be accompanied by a showing of interest as defined in N.J.A.C. 19:10-1.1 of not less than 30 percent of the employees in the unit alleged to be appropriate. An alphabetical list of such designations also shall be submitted to the Director of Representation.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Amended by R.2000 d.320, effective August 7, 2000.

See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

In (a)9, deleted a requirement that the list be typewritten in the last sentence.

### **19:11-1.3            Contents of petition for decertification**

(a) A petition for decertification of public employee representative shall contain:

1. A statement that the employee representative certified by the Commission or recognized by the public employer no longer represents a majority of the employees in the collective negotiations unit in which it is currently recognized or certified;

2. The information required by N.J.A.C. 19:11-1.2 (Contents of petition for certification), except paragraph (a)9;

3. The petition for decertification shall be accompanied by a showing of interest of not less than 30 per cent of the employees in the unit in which an exclusive representative has been recognized or certified. A showing of interest shall indicate that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified employee representative or by any other employee representative.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### **19:11-1.4            Petition for certification filed by a public employer**

(a) A petition for certification of public employee representative filed by a public employer shall state that a claim for representation or continued representation has been made by one or more public employees, groups of public employees, individuals or employee organizations and that the public employer has a good faith doubt concerning the majority status of the representative of its employees.

(b) A petition for certification of representative filed by a public employer shall include all of the information set forth in N.J.A.C. 19:11-1.2, except paragraph (a)9.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### **19:11-1.5            Petition for clarification of unit**

(a) The exclusive representative or the public employer may file a petition for clarification of unit.

(b) A petition for clarification of unit shall contain:

1. A description of the present negotiations unit and the date of the certification or recognition, if known;

2. A description of the proposed clarification of the unit;

3. A statement by petitioner setting forth reasons as to why clarification of unit is requested;

4. The information required by paragraphs (a)1, and (a)4 through (a)8 of N.J.A.C. 19:11-1.2.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).  
Amended by R.2000 d.320, effective August 7, 2000.  
See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).  
In (b)1, added ", if known" at the end.

#### **19:11-1.6            Petition for amendment of certification**

(a) An employee organization may file a petition for amendment of certification issued by the Commission for the purpose of recording a change in the name or in the affiliation of the exclusive representative.

(b) A petition for amendment of certification shall contain:

1. The name of the employer and the name of the certified employee organization involved;
2. The address of the public employer;
3. An identification and description of the existing certification;
4. A statement by the petitioner setting forth the reason for the desired amendment;
5. The name, the affiliation, if any, and the address of the petitioner;
6. Any other relevant facts; and

7. This dated and signed certification by the petitioner or its representative: "I declare that I have read the above petition and that the information is true to the best of my knowledge and belief."

(c) A petition for amendment of certification shall be supported by an affidavit attesting that the membership of the certified employee representative voted in favor of the change in name and affiliation. Such affidavit shall specify that:

1. The membership was given advance notice of the election;
2. The election was conducted by secret ballot;
3. A majority voted in favor of the change in name and affiliation; and
4. The organization's officers and the unit structure remain unchanged.

As amended, R.1973 d.110, effective May 10, 1973.  
See: 5 N.J.R. 61(a), 5 N.J.R. 171(c).  
As amended, R.1974 d.127, effective May 24, 1974.  
See: 6 N.J.R. 127(a), 6 N.J.R. 285(b).  
As amended, R.1974 d.346, effective December 18, 1974.  
See: 6 N.J.R. 456(b), 7 N.J.R. 35(d).  
As amended, R.1974 d.347, eff. December 18, 1974.  
See: 6 N.J.R. 456(a), 7 N.J.R. 36(a).  
Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).  
Amended by R.2000 d.320, effective August 7, 2000.  
See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).  
In (a), inserted "name or in the" preceding "affiliation".

### **SUBCHAPTER 2            PROCESSING OF PETITIONS**

#### **19:11-2.1            Validity of showing of interest**

The showing of interest shall not be furnished to any of the parties. The Director of Representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack. Neither the nature nor the size of the showing of interest shall be divulged.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Amended by R.2000 d.320, effective August 7, 2000.

See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

Added a third sentence.

#### **19:11-2.2 Investigation of petition**

(a) Upon the filing of any petition, the Director of Representation shall investigate the petition to determine the facts.

(b) The Director of Representation shall determine whether or not a valid question concerning the representation of employees exists in a prima facie appropriate unit.

As amended, R.1974 d.127, eff. May 24, 1974.

See: 6 N.J.R. 127(a), 6 N.J.R. 285(b).

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-2.3 Withdrawal or dismissal of petition**

(a) If the Director of Representation determines after an investigation that any petition has not been timely filed; or, in a petition for certification or decertification, that no valid question concerning the representation of employees exists in a prima facie appropriate unit; or, in a petition for clarification of unit, that there is no dispute concerning the composition of the unit of public employees, the Director may request the party filing such a petition to withdraw the petition without prejudice or, in the absence of such withdrawal, within a reasonable time may dismiss the petition.

(b) Such action may be taken by the Director of Representation at any time before the closing of the case.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-2.4 Posting of notice of petition**

(a) After the filing of a representation petition, the Director of Representation will direct that the public employer post a notice to all employees, in places where notices are normally posted affecting the employees in the unit involved in the proceeding, on forms to be furnished by the Director of Representation.

(b) Such notices shall set forth:

1. The name of the petitioner;
2. The description of the unit involved; and
3. A statement that all interested parties are to advise the Director of Representation in writing of their interest as soon as possible.

(c) The notice shall remain posted for a period of 10 days from the date of receipt by the public employer. The public employer shall certify to the Director of Representation that the notice has been conspicuously posted for a period of 10 days where notices are normally posted and that the notice has not been covered by other material, altered or defaced.

(d) In addition, the public employer shall furnish the Director of Representation with the names, addresses and telephone numbers of all employee organizations which have within the preceding 12 months claimed to represent any of the

employees in the requested unit.

(e) The failure of the Director of Representation to direct the posting of such notices or the failure of the public employer to post notices normally shall not serve to delay or invalidate any subsequent Commission action which occurs pursuant to the filing of a petition.

As amended, R.1974 d.127, effective May 24, 1974.

See: 6 N.J.R. 127(a), 6 N.J.R. 285(b).

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-2.5            Public docket**

The Director of Representation shall maintain (at the Commission's offices in Trenton) a public docket of all petitions. Such docket shall contain a copy of the petition but shall not include any showing of interest. The petition shall remain in the public docket until the case is closed.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-2.6            Investigation of petition; disposition**

(a) If no agreement for consent election has been reached pursuant to N.J.A.C. 19:11-4.1, the Director of Representation shall conduct a further investigation. The petitioner, the public employer, and any intervenor(s) shall present documentary and other evidence, as well as statements of position, relating to the matters and allegations set forth in the petition. Such submissions shall be simultaneously served upon the parties.

(b) Information disclosed to a staff member in confidence regarding any representation matter shall not be divulged. All files, records, reports, documents or other papers received or prepared by a staff member for purposes of settlement shall be classified as confidential. The staff member shall not produce any confidential records of, or testify in regard to, any settlement discussions conducted by him or her, on behalf of any party in any type of proceeding.

(c) After the investigation of such petition, the Director of Representation shall either:

1. Request the petitioner to withdraw the petition, or in the absence of withdrawal, dismiss the petition, pursuant to N.J.A.C. 19:11-2.3;

2. Issue a decision dismissing the petition, if it appears to the Director of Representation that there is not reasonable cause to believe that a valid question concerning representation exists in an appropriate unit;

3. Issue a decision directing an election in an appropriate unit, if it appears to the Director of Representation that there is reasonable cause to believe that a valid question concerning representation exists in an appropriate unit and that an election reflecting the free choice of the employees in the appropriate unit will effectuate the policies of the Act (N.J.S.A. 34:13A-1.1 et seq.);

4. Issue a decision clarifying a unit;

5. Issue a decision amending a certification; or

6. Take other measures the Director of Representation deems appropriate.

(d) Action by the Director of Representation pursuant to (c) above shall be based on an administrative investigation or a hearing conducted pursuant to N.J.A.C. 19:11-6.1 (Hearings).

(e) A hearing shall be conducted:

1. If it appears to the Director of Representation that substantial and material factual issues exist which, in the exercise of reasonable discretion, may more appropriately be resolved after a hearing; or

2. If it appears to the Director of Representation that the particular circumstances of the case are such that, in the exercise of reasonable discretion, the Director determines that a hearing will best serve the interests of administrative convenience and efficiency.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Amended by R.2000 d.320, effective August 7, 2000.

See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

In (a), added a third sentence; inserted a new (b); recodified former (b) through (d) as (c) through (e); and in the new (d), made an internal reference change.

#### **19:11-2.7 Intervention**

(a) Any party seeking to intervene in a representation proceeding must submit a written request to the Director of Representation.

(b) To intervene in a proceeding initiated by a petition for certification, an incumbent employee organization must submit either:

1. Evidence that it is currently certified or recognized in accordance with N.J.A.C. 19:11-3.1 (Recognition as exclusive representative) as the exclusive representative of any of the employees sought by the petition; or

2. A current or recently expired collective negotiations agreement covering any of the petitioned-for employees.

(c) An employee organization other than the incumbent representative seeking to intervene in a proceeding initiated by a petition for certification must submit a showing of interest of not less than 10 percent of the employees in the petitioned-for unit or not less than 30 percent of the employees in the unit it claims to be appropriate if it seeks to represent a unit different from that sought by the petitioner.

(d) To intervene in a proceeding initiated by a petition for decertification, the incumbent representative must submit evidence as set forth in (b)1 or 2 above, and express in writing its continued interest in representing the unit of employees named in the petition. Whenever the incumbent representative fails to intervene pursuant to this subsection, the Director may, upon adequate notice, determine without an election that the incumbent organization is no longer the majority representative.

(e) To intervene in a proceeding initiated by a petition for clarification of unit, an employee organization must submit either:

1. Evidence that it is the currently certified or recognized representative of any of the employees named in the petition; or

2. A current or recently expired collective negotiations agreement covering any of the employees named in the petition.

(f) A request by an employee organization to intervene in a representation proceeding may be made at any time before:

1. The opening of a hearing held pursuant to N.J.A.C. 19:11-6.1 (Hearings); or

2. The issuance of a decision by the Director of Representation without a hearing, pursuant to N.J.A.C. 19:11-2.6 (Investigation of petition; disposition); or

3. Approval by the Director of Representation of an agreement for consent election, pursuant to N.J.A.C. 19:11-4.1 (Agreement for consent election).

(g) A motion to intervene during a hearing shall comply with N.J.A.C. 19:11-6.9 (Motions), but shall not be granted unless it is accompanied by a valid showing of interest and upon good cause shown which reasonably prevented the moving party from having filed a timely notice to intervene.

R.1974 d.344, eff. December 18, 1974.

See: 6 N.J.R. 457(a), 7 N.J.R. 35(b).

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Amended by R.2000 d.320, effective August 7, 2000.

See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

Rewrote the section.

### **19:11-2.8 Timeliness of petitions**

(a) Where there is no recognized or certified exclusive representative of the employees, a petition for certification of public employee representative will be considered timely filed provided there has been no valid election within the preceding 12-month period in the requested negotiations unit or any subdivision of the unit.

(b) Where there is a certified or recognized representative, a petition for certification or decertification will not be considered timely filed if during the preceding 12 months an employee organization has been certified by the Commission as the exclusive representative of employees in an appropriate unit, or an employee organization has been granted recognition by a public employer pursuant to N.J.A.C. 19:11-3.1 (Recognition as exclusive representative).

(c) During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless:

1. In a case involving employees of the State of New Jersey, any agency of the State or any State authority, commission or board, the petition is filed not less than 240 days and not more than 270 days before the expiration or renewal date of such agreement;

2. In a case involving employees of a county or a municipality, any agency of a county or municipality or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement;

3. In a case involving employees of a school district, the petition is filed during the period between September 1 and October 15, inclusive, within the last 12 months of such agreement.

(d) For the purpose of determining a timely filing, an agreement for a term in excess of three years will be treated as a three-year agreement; an agreement for an indefinite term shall be treated as a one-year agreement measured from its effective date.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

## **SUBCHAPTER 3 RECOGNITION AS EXCLUSIVE REPRESENTATIVE**

### **19:11-3.1 Recognition as exclusive representative**

(a) Whenever a public employer has been requested to recognize an employee organization as the exclusive representative of a majority of the employees in an appropriate collective negotiations unit, the public employer and the employee organization may resolve such matters without the intervention of the Commission.

(b) The Commission will accord certain privileges to such recognition as set forth in N.J.A.C. 19:11-2.7, Intervention and N.J.A.C. 19:11-2.8, Timeliness of petitions, provided the following criteria have been satisfied before the written grant of such recognition by a public employer:



1. The public employer has satisfied itself in good faith, after a suitable check of the showing of interest, that the employee representative is the freely chosen representative of a majority of the employees in an appropriate collective negotiations unit;

2. The public employer conspicuously posted a notice, where notices to employees are normally posted, for a period of at least 10 consecutive days advising all persons that it intends to grant such exclusive recognition without an election to a named employee organization for a specified negotiations unit;

3. The public employer served written notification on any employee organizations that have claimed, by a written communication within the year preceding the request for recognition, to represent any of the employees in the unit involved, or any organization with which it has dealt within the year preceding the date of the request for recognition. Such notification was made at least 10 days before the grant of recognition and contained the information set forth in (b)2 above;

4. Another employee organization has not within the 10-day period notified the public employer, in writing, of a claim to represent any of the employees in the collective negotiations unit or has not within such period filed a valid petition for certification of public employee representative with the Director of Representation;

5. Such recognition shall be in writing and shall set forth specifically the collective negotiations unit involved.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Amended by R.2000 d.320, effective August 7, 2000.

See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

In (b)2, deleted a reference to bulletin boards.

## **SUBCHAPTER 4                    AGREEMENT FOR CONSENT ELECTION**

### **19:11-4.1                    Agreement for consent election**

(a) Where one or more employee organizations assert a claim to represent employees in an appropriate unit and a petition for certification of public employee representative or a petition for decertification of public employee representative has been filed, the parties may stipulate, subject to the approval of the Director of Representation, that a secret ballot election shall be conducted by the Commission among the employees in an appropriate collective negotiations unit to determine whether they desire to be represented for purposes of collective negotiations by any or none of the employee organizations involved. The parties to such proceeding shall be the public employer, the petitioner and any intervenors who shall have complied with the requirements set forth in N.J.A.C. 19:11-2.7 (Intervention).

(b) The parties shall stipulate as to the composition of the collective negotiations unit, and may agree as to the eligibility period for participation in the election, the dates, hours and places of the election, and the designations on the ballot, subject to the approval of the Director of Representation. In the absence of an agreement among the parties as to the eligibility period for participation in the election, the dates, hours and places of the election, and the designation on the ballot, the Director of Representation shall determine those arrangements.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

## **SUBCHAPTER 5                    DIRECTED ELECTIONS**

### **19:11-5.1                    Directed elections**

A secret ballot election directed by the Commission or the Director of Representation, pursuant to N.J.A.C. 19:11-2.6 (Investigation of petition; disposition), shall be conducted in accordance with the order of the Commission or Director of Representation set forth in the decision directing the election. All elections shall be conducted under the supervision of the Director of Representation. The Director of Representation may provide an opportunity to the parties to agree

upon the dates, hours and places of the election, and the designations on the ballot, subject to his or her approval. The Director of Representation may authorize an officer to convene a conference among the parties for such purpose, at any time after the direction of an election. Absent an agreement among the parties, the Director of Representation shall determine the dates, hours and places of the election, and the designations on the ballot.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

## **SUBCHAPTER 6            HEARINGS**

### **19:11-6.1            Who shall conduct; to be public unless otherwise ordered**

(a) Hearings in representation proceedings shall be conducted by the Director of Representation or a hearing officer designated by the Director of Representation, unless the Commission or any of its members presides. When conducting a hearing the Director of Representation shall have all the duties and powers of a hearing officer pursuant to this subchapter. Such hearings shall be public unless otherwise ordered, for good cause, by the Director of Representation, the Commission or the hearing officer.

(b) An official reporter shall make the only official transcript of such proceedings.

(c) Copies of the official transcript will not be provided by the Commission except as provided by law.

(d) Copies of the transcript may be purchased by arrangement with the official reporter, or examined in the Commission's offices during normal working hours. If a transcript of the proceedings is ordered before a recommended decision has been issued, the ordering party shall, at the time of ordering, notify the hearing officer that a transcript has been ordered and shall have the reporter service file a copy of the transcript with the hearing officer for inclusion in the record.

Amended by R.1990 d.406, effective August 20, 1990.

See: 22 N.J.R. 1910(a), 22 N.J.R. 2531(b).

Party ordering a transcript required to have reporter service file a copy with the Commission.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### **19:11-6.2            Notice of hearing**

(a) The Director of Representation shall issue a notice of hearing under the circumstances set forth in N.J.A.C. 19:11-2.6(d) (Investigation of petition; disposition).

(b) A notice of hearing shall be served on all interested parties at least 10 days before the hearing and shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the unit claimed to be appropriate;
3. The name of the public employer, petitioner and intervenors, if any;
4. A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) Hearings under this section of these rules are considered investigatory and not adversarial. Their purpose is to develop a complete factual record upon which the Director of Representation or the Commission may discharge the duties under N.J.S.A 34:13A-6.

(d) Representation hearings and the procedures following such hearings shall be in accordance with these rules.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### **19:11-6.3 Duties and powers of hearing officer**

(a) The hearing officer shall have the duty to inquire fully into the facts.

(b) Before the case is transferred to the Commission, the hearing officer shall have the authority, subject to these rules and the Act, to:

1. Administer oaths and affirmations;
2. Grant applications for subpoenas;
3. Rule upon petitions to quash subpoenas;
4. Rule upon offers of proof and receive relevant evidence;
5. Take or cause depositions to be taken whenever the ends of justice would be served;
6. Limit lines of questioning or testimony which are repetitive, cumulative or irrelevant;
7. Regulate the course of the hearing and, if appropriate, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of a witness refusing to answer any proper question;
8. Hold conferences for settling or simplifying the issues;
9. Except as otherwise provided by these rules, dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions referred to the hearing officer by the Commission and motions to amend pleadings, also, in cases where a report and recommendations shall issue pursuant to N.J.A.C. 19:11-7.1 (Submission of the hearing officer's report to the Commission), to recommend dismissal of cases in whole or in part, and to order hearings reopened;
10. Call, examine and cross-examine witnesses and introduce into the record documentary or other evidence;
11. Request the parties to state their positions concerning any issue;
12. Take any other necessary action authorized by these rules.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### **19:11-6.4 Unavailability of hearing officer**

(a) If the hearing officer becomes unavailable, the Director of Representation or the Commission may designate another hearing officer for the purpose of further hearing or issuance of a report and recommendations on the record as made, or both. The parties shall be notified of that designation.

(b) If the hearing officer becomes unavailable after the hearing has been conducted and before a report and recommendations has issued, the Commission may transfer the case to itself to issue a decision.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).  
Amended by R.2000 d.320, effective August 7, 2000.  
See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).  
In (a), added a second sentence.

#### **19:11-6.5 Rights of parties**

Any party shall have the right to appear at such hearing in person, or by authorized representative, to call, examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing officer. Five copies of documentary evidence shall be submitted unless the hearing officer permits a reduced number of copies.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-6.6 Rules of evidence**

(a) The parties shall not be bound by rules of evidence, whether statutory, common law or adopted by the Rules of Court.

(b) All relevant evidence is admissible, except as otherwise provided by this section.

(c) A hearing officer may, in the exercise of discretion, exclude any evidence or offer of proof if its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion.

(d) The hearing officer shall give effect to the rules of privilege recognized by law.

(e) Notice may be taken of administratively noticeable facts and of facts within the Commission's specialized knowledge. The material noticed shall be referred to in the hearing officer's report and recommendations, and any party may contest the material so noticed by filing timely exceptions pursuant to N.J.A.C. 19:11-7.3 (Exceptions; cross-exceptions; briefs; answering briefs).

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-6.7 Stipulations of facts**

(a) In any proceeding stipulations of facts may be submitted.

(b) Stipulations of fact may be accepted by the Director of Representation for a decision without a hearing.

(c) The acceptance of stipulations of facts by the Director of Representation may be deemed a waiver of a right to hearing. The parties may also agree to waive a hearing officer's report and recommendation.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-6.8 Objection to conduct of hearing**

(a) Any objection to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection and included in the record.

(b) An objection shall not be deemed waived by further participation in the hearing.

(c) During a hearing, the Commission will not review any objection to the rulings of a hearing officer or the conduct of a hearing except by special permission to appeal pursuant to N.J.A.C. 19:14-4.6(b). Review by the Commission shall not stay the conduct of the hearing unless otherwise ordered by the Commission.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-6.9            Motions**

(a) All written motions shall briefly state the order or relief sought and, if appropriate, shall be supported by affidavits.

1. An original and two copies of a motion and any response to a motion made before the designation of a hearing officer shall be filed with the Director of Representation, together with proof of service of a copy on all other parties.

2. An original and two copies of a motion and any response to a motion made after the designation of a hearing officer and before the issuance of hearing officer's report and recommendations shall be filed with the hearing officer, together with proof of service of a copy on all other parties.

3. An original and nine copies of a motion and any response to a motion made after the issuance of hearing officer's report and recommendations shall be filed with the Commission, together with proof of service of a copy on all other parties.

(b) Answering arguments, documents or affidavits, if any, must be served on all parties and shall be filed with the Director of Representation, hearing officer or Commission as set forth in (a)1, 2, or 3 above, within five days of service of the moving papers, unless otherwise ordered, except that a hearing officer may permit a response to a motion made during a hearing to be made in the same manner.

(c) The Commission may rule upon all motions filed after issuance of the hearing officer's report and recommendations or may refer the motion to the hearing officer.

(d) The Commission, Director of Representation, or hearing officer, as applicable, may decide to hear oral argument or take testimony on any motion. The parties shall be notified of the time and place of hearing argument or taking testimony.

(e) All motions, responses, rulings and orders shall be part of the record.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-6.10            Review of rulings**

Interlocutory rulings by a hearing officer or by the Director of Representation shall not be appealed directly to the Commission, except by special permission pursuant to N.J.A.C. 19:14-4.6(b).

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-6.11            Waiver of objections**

An objection not duly raised before a hearing officer shall be deemed waived unless the Commission excuses the failure to raise the objection because of extraordinary circumstances.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-6.12            Filing of brief and oral argument at hearing**

(a) Any party shall be entitled, upon request, to a reasonable period before the hearing closes for oral argument, which shall be included in the official transcript of the hearing.

(b) Any party shall be entitled, upon request made before the hearing closes, to file a brief or proposed findings and conclusions, or both, with the hearing officer, who may fix a reasonable time for such filing.

(c) A request for an extension of time for good cause shown shall be made to the hearing officer, together with proof of service of a copy on all other parties.

(d) No request will be considered unless received before the expiration of the time fixed for the filing of briefs or proposed findings and conclusions, unless expressly authorized by the hearing officer.

(e) Five copies of any brief or proposed findings and conclusions shall be filed with the hearing officer, together with proof of service of a copy on all other parties.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-6.13 Continuance or adjournment**

At the discretion of the hearing officer, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement at the hearing by the hearing officer, or by other appropriate notice.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-6.14 Misconduct**

Misconduct at any hearing before a hearing officer or the Commission shall be grounds for summary exclusion from the hearing. Misconduct of an aggravated character by a representative of a party shall be grounds for suspension or disbarment by the Commission from further practice before it after due notice and hearing.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### **SUBCHAPTER 7 HEARING OFFICER'S REPORT; TRANSFER OF CASE TO THE COMMISSION, AND ACTION BY THE COMMISSION**

#### **19:11-7.1 Submission of the hearing officer's report to the Commission**

After the hearing, the hearing officer shall prepare a report and recommendations which shall include findings of fact, conclusions of law, and a recommendation as to the action to be taken. The hearing officer shall file the original with the Commission and shall serve a copy on the parties. Service shall be complete upon mailing and the case shall then be deemed transferred to the Commission.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-7.2 Record in the case**

The record shall consist of the petition, notice of hearing, motions, rulings, orders, any official transcript of the hearing, stipulations, documentary evidence, together with the hearing officer's report and recommendations and any exceptions, cross-exceptions, briefs and answering briefs.

Amended by R.1990 d.406, effective August 20, 1990.

See: 22 N.J.R. 1910(a), 22 N.J.R. 2531(b).

Party ordering a transcript required to have reporter service file a copy with the Commission.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

**19:11-7.3 Exceptions; cross-exceptions; briefs; answering briefs**

(a) Within 10 days of service on it of a report and recommendations or such longer period as the Commission may allow, any party may file with the Commission an original and nine copies of any exceptions to the report and recommendations or to any other part of the record or proceedings (including rulings upon motions or objections), together with an original and nine copies of a brief in support of the exceptions. Any party may, within the same period, file an original and nine copies of a brief in support of the report and recommendations. A request for an extension of time to file exceptions or briefs shall be in writing and shall state the other parties' positions with respect to such request. Filings under this subsection shall be accompanied by proof of service of a copy on all other parties.

(b) Exceptions to a hearing officer's report and recommendations shall:

1. Specify each question of procedure, fact, law or policy to which exception is taken;
2. Identify that part of the report and recommendations to which objection is made;
3. Designate by precise page citation the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities, unless set forth in a supporting brief. If a transcript of the proceedings is ordered for the purposes of filing exceptions to a recommended decision, the ordering party shall have the reporter service file a copy of the transcript with the Commission.

(c) Any exception which is not specifically urged shall be deemed to have been waived.

(d) Any exception which fails to comply with the foregoing requirements may be disregarded.

(e) Any brief in support of exceptions shall not contain any matter outside the scope of the exceptions and shall contain, in the order indicated:

1. A concise statement of the case containing all that is material to the consideration of the questions presented;
2. A specification of the questions to be argued;
3. The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(f) Within five days of service on it of exceptions, or such longer period as the Commission may allow, a party opposing the exceptions may file an original and nine copies of an answering brief, limited to the questions raised in the exceptions and in the brief in support of exceptions, together with proof of service of a copy on all other parties. Filing, service, and proof of service of a request for an extension of time shall conform to N.J.A.C. 19:11- 7.3(a).

(g) Within five days of service on it of exceptions, or such longer period as the Commission may allow, any party that has not previously filed exceptions may file an original and nine copies of cross-exceptions to any portion of the hearing officer's report and recommendations, together with a supporting brief, in accordance with N.J.A.C. 19:11-7.3(b), together with proof of service of a copy on all other parties. Filings, service, and proof of service of a request for an extension of time shall conform to N.J.A.C. 19:11-7.3(a).

(h) Within five days of service on it of cross-exceptions, or such longer period as the Commission may allow, any other party may file an original and nine copies of an answering brief in accordance with the provisions of N.J.A.C. 19:11-7.3(f), limited to the questions raised in the cross- exceptions, together with proof of service of a copy on all other parties. Filing, service, and proof of service of a request for an extension of time shall conform to N.J.A.C. 19:11-7.3(a).

(i) No further briefs shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties.

(j) Any matter not included in exceptions or cross-exceptions may not be urged before the Commission in any proceeding.

Amended by R.1990 d.406, effective August 20, 1990.

See: 22 N.J.R. 1910(a), 22 N.J.R. 2531(b).

Party ordering a transcript required to have reporter service file a copy with the Commission.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

**19:11-7.4            Action by the Commission; consolidation or severance of proceedings; decision in the absence of exceptions**

(a) The Commission shall adopt, reject or modify the hearing officer's report and recommendations. The Commission may decide the matter upon the record or after oral argument. It may also reopen the record and receive further evidence. A decision, order or direction of the Commission shall set forth findings of fact and conclusions of law. A decision, order or direction of the Commission, that disposes of the case in its entirety shall be a final administrative determination.

(b) Whenever necessary to effectuate the purposes of the Act or to avoid unnecessary costs or delay, the Commission or Director of Representation may order any proceeding to be severed from or consolidated with any other proceeding.

(c) If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

**SUBCHAPTER 8            REQUEST FOR COMMISSION REVIEW**

**19:11-8.1            Filing of request**

(a) Within 10 days of service on it of the Director of Representation's decision, order or direction, any aggrieved party may file a request for review with the Commission.

(b) An original and nine copies of a request for review shall be filed with the Commission, together with proof of service of a copy on all other parties. The filing of a request for review with the Commission shall not operate, unless otherwise ordered by the Commission, as a stay of any action taken, ordered or directed by the Director of Representation.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

**19:11-8.2            Grounds for granting a request for review**

(a) The Chairman may grant a request for review. A request for review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.



Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### **19:11-8.3            Contents of request for review; timely presentment of facts**

(a) A request for review must be a self-contained document enabling the Commission or Chairman to rule on the basis of its contents.

(b) A request must contain a summary of all evidence and rulings bearing on the issues, together with page citations from the official transcript and a summary of argument.

(c) A request may not raise any issue or allege any facts not timely presented to the Director of Representation or the hearing officer, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented.

(d) A request for review must specify both the grounds supporting review and address the merits of the issues for which relief is sought.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).  
Amended by R.2000 d.320, effective August 7, 2000.  
See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).  
Added (d).

### **19:11-8.4            Statement in opposition to a request for review**

Within seven days of service on it of a request for review, any party may file with the Commission an original and nine copies of a statement in opposition to the request, together with proof of service of a copy on all other parties.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### **19:11-8.5            Waiver of right to request review**

(a) The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any Commission proceeding, any issue which was or could have been raised in the proceeding.

(b) A Commission order disposing of a case in its entirety, or a Commission order denying a request for review of a decision, order or certification issued by the Director of Representation disposing of a case in its entirety shall constitute the final administrative determination of the Commission.

Amended by R.1995 d.488, effective September 5, 1995.  
See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### **19:11-8.6            Stay of decision; filing of briefs with the Commission; Commission consideration**

(a) The granting of a request for review shall not stay the Director of Representation's decision unless otherwise ordered by the Commission.

(b) Where review has been granted, the Commission will consider the entire record in the light of the grounds relied on for review.

(c) Any request for review may be withdrawn with the permission of the Commission before issuance of a Commission decision.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Amended by R.2000 d.320, effective August 7, 2000.

See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

Deleted former (b) and (c); and recodified former (d) and (e) as (b) and (c).

#### **19:11-8.7 Decision by the Commission**

The Commission shall proceed upon the record to decide the issues referred to it or to review the decision of the Director of Representation. It shall affirm or reverse the decision of the Director of Representation, in whole or in part, or make such other disposition of the matter as it deems appropriate.

Amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### **SUBCHAPTER 9 TRANSFER TO THE COMMISSION; RECONSIDERATION**

#### **19:11-9.1 Transfer to Commission on its own motion**

The Commission may, at any time, on its own motion, transfer a case to itself for appropriate action.

Recodified from 19:11-8.8 and amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-9.2 Oral argument**

Any request for oral argument before the Commission shall be in writing on a separate piece of paper and filed simultaneously with the statement of any exceptions or cross-exceptions filed pursuant to N.J.A.C. 19:11-7.3 (Exceptions; cross-exceptions; briefs; answering briefs), together with proof of service of a copy on all other parties. The Commission shall notify the parties if the request for oral argument is granted and of the time and place of any oral argument.

New Rule, R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-9.3 Motion for Commission reconsideration**

After a Commission decision has been issued, a party may move for reconsideration. The movant shall specify the extraordinary circumstances warranting reconsideration and the pages of the record it relies on. Any motion pursuant to this section shall be filed within 15 days of service of the Commission decision, together with proof of service of a copy on all other parties. Any party opposing reconsideration may file a response within five days of service on it of the motion, together with proof of service of a copy on all other parties. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Commission decision, unless otherwise ordered by the Commission. A motion for reconsideration need not be filed to exhaust administrative remedies.

Recodified from 19:11-8.9 and amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### **SUBCHAPTER 10 ELECTION PROCEDURES**

#### **19:11-10.1 Eligibility list**

(a) In all representation elections conducted pursuant to this subchapter, unless otherwise directed by the Director of Representation, the public employer is required to file simultaneously with the Director of Representation and with the employee organization(s) an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters and their last known mailing addresses and job titles. In addition, the public employer shall file a statement of service

with the Director of Representation. In order to be timely filed, the eligibility list must be received by the Director of Representation no later than 10 days before the date of the election. The Director of Representation shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

(b) Failure to comply with the requirements of this section may be grounds for setting aside the election whenever proper objections are filed pursuant to N.J.A.C. 19:11-10.3(h). Additionally, the Director of Representation may, in the exercise of reasonable discretion, issue a subpoena or direction requiring the production of the eligibility list, and in the event of noncompliance, may institute appropriate enforcement proceedings pursuant to court rules.

(c) Actions of the Director of Representation pursuant to this section shall not be reviewable under N.J.A.C. 19:11-8.1 (Request for review).

New Rule, R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Amended by R.2000 d.320, effective August 7, 2000.

See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

In (b), substituted "may" for "shall" in the first sentence.

### **19:11-10.2 Notices of election; improper use of notices**

(a) Notices of election shall be furnished by the Director of Representation to the public employer for posting where notices are normally posted affecting the employees in the unit involved in the election. Such notices shall set forth the details and procedures for an election, the appropriate unit, the eligibility period, and the date(s), hours and place(s) of the election and shall contain a sample ballot.

(b) The reproduction of any document purporting to be a copy of the Commission's official ballot which suggests either directly or indirectly to employees that the Commission endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed.

Recodified from 19:11-9.1 and amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

### **19:11-10.3 Election procedures**

(a) All elections shall be by secret ballot and shall be conducted under the supervision and direction of a Commission agent. The secret ballot may be accomplished manually or by the use of a mail ballot or by a mixed manual-mail ballot system, as determined by the Director of Representation.

(b) Whenever two or more employee organizations are included as choices in an election, any employee organization may request the Director of Representation to remove its name from the ballot. The request must be received not later than five days before the date of the election or the mailing of ballots to the eligible voters. Such request shall be subject to the approval of the Director of Representation whose decision shall be final. In a proceeding involving a public employer-filed petition or a petition for decertification, the employee organization that is certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving the aforementioned notice in writing to all parties and the Director of Representation, disclaiming any representation interest among the employees in the unit.

(c) The eligible voters shall be those employees included within the unit described in the agreement for consent election or as determined by the Commission or Director of Representation, who were employed during the payroll period for eligibility, including employees who did not work during that period because they were ill, or on vacation, or temporarily laid off, including those in the military service, and those on leaves of absence. In a manual ballot election, employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are those employees who have retired or quit or were discharged for cause prior to the commencement of the election and who have not been rehired or reinstated before the counting of ballots.

(d) Unless otherwise approved by the Director of Representation or by the election agent, all observers shall be non-supervisory employees of the public employer. Each party shall be allowed an equal number of observers. Observers shall:

1. Act as checkers at the voting place and in the counting of the ballots;
2. Assist in the identification of voters;
3. Challenge the eligibility of voters and ballots; and
4. Otherwise assist the election agent.

(e) An observer or the election agent may challenge the eligibility of any person to participate in the election. Such challenge must be asserted before a person casts a ballot and shall be recorded in writing specifying the name of the challenged person, the name of the challenging party, and the reason for the challenge. All persons whose names do not appear on the eligibility list maintained by the Commission election agent shall automatically be challenged by the election agent. A challenged voter shall be permitted to vote and the ballot shall be sealed in an appropriate challenge ballot envelope after the voter marks the ballot, which sealed envelope shall be dropped in the ballot box. At the conclusion of the balloting, the parties may be provided the opportunity to resolve the challenged ballots, subject to the approval of the election agent.

(f) The election agent shall have responsibility for the conduct of the election, and may establish any procedures the agent deems necessary to facilitate the election process and preserve the integrity of the secret ballot.

(g) The ballots shall be counted at a location designated by the Director of Representation or the election agent before the election. Any person may attend and witness the tally subject to such limitation as the Director of Representation or the election agent may prescribe. After the election, the Director of Representation shall furnish the parties with a tally of ballots.

(h) Within five days after the tally of ballots has been furnished, a party may file with the Director of Representation an original and four copies of objections to the conduct of the election or conduct affecting the results of the election, together with proof of service of a copy on all other parties. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. A party filing objections must furnish evidence, such as affidavits or other documentation, that precisely and specifically shows that conduct has occurred which would warrant setting aside the election as a matter of law. The objecting party shall bear the burden of proof regarding all matters alleged in the objections and shall produce the specific evidence supporting its claim of irregularity in the election process. Failure to submit such evidence may result in the immediate dismissal of the objections.

(i) If the party filing objections has furnished sufficient evidence to support a prima facie case, the Director of Representation shall conduct an investigation into the objections.

(j) A hearing may be conducted where an administrative investigation into the objections reveals that substantial and material factual issues have been placed in dispute which, in the exercise of the reasonable discretion of the Director of Representation, may more appropriately be resolved after a hearing. After the investigation and any hearing has been completed, an administrative determination will be made either setting aside the election and directing a new one, or dismissing the objections and issuing the appropriate certification.

(k) If challenged ballots are sufficient in number to affect the results of an election, the Director of Representation shall investigate such challenges. All parties to the election shall present documentary and other evidence, as well as statements of position, relating to the challenged ballots. After the administrative processing of the challenged ballots and any hearing has been completed, the Director of Representation shall make an administrative determination which shall resolve the challenges and contain the appropriate administrative direction.

(l) If no objections are filed within five days after the tally of ballots has been furnished, if the challenged ballots are insufficient in number to affect the results of the election, and if no runoff election is to be held, the Director of

Representation shall issue to the parties a certification of results of the election, or a certification of representative, where appropriate.

Recodified from 19:11-9.2 and amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

Amended by R.2000 d.320, effective August 7, 2000.

See: 32 N.J.R. 1503(a), 32 N.J.R. 2926(b).

In (c), inserted ", and those on leaves of absence" at the end of the first sentence, and rewrote the third sentence.

#### **19:11-10.4      Runoff elections**

(a) An election with three or more choices on the ballot (for example, at least two representatives and "no representative") that results in no choice receiving a majority of the valid ballots cast will be considered an inconclusive election. In such cases, the Director of Representation shall order a runoff election.

1. Objections, timely filed, shall be disposed of before a runoff election is ordered.
2. The ballot for a runoff election shall provide for a choice between the two choices receiving the largest number of votes in the prior election.
3. Employees who were eligible to vote in the prior election and who continue to be included in the voting unit on the date of the runoff election shall be eligible to vote in the runoff election.
4. The runoff election shall be conducted in accordance with N.J.A.C. 19:11-10.3 (Election procedures), as applicable.

(b) Only one runoff election shall be held pursuant to this section, but a rerun election may be ordered pursuant to N.J.A.C. 19:11-10.5.

Recodified from 19:11-9.3 and amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-10.5      Rerun elections**

(a) An election will be declared a nullity when objections are sustained pursuant to N.J.A.C. 19:11-10.3. A nullity shall also be declared where an election with three or more ballot choices is inconclusive because either all choices received an equal number of votes or two choices received an equal number of votes and a third choice received a higher number of votes that is less than a majority. If an election is declared a nullity, the Director of Representation shall order a rerun election.

1. The ballot for a rerun election shall have the same choices as provided on the ballot in the prior election.
2. Employees who are eligible to vote pursuant to N.J.A.C. 19:11-10.3(c) shall be eligible to vote in the rerun election.
3. The rerun election shall be conducted in accordance with N.J.A.C. 19:11-10.3 (Election procedures) as applicable.

(b) The scheduling of further elections pursuant to this section shall be at the discretion of the Director of Representation.

Recodified from 19:11-9.4 and amended by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

#### **19:11-10.6      No majority representative**

In a rerun election, if no ballot choice receives a majority of the valid ballots cast, and there are no unresolved challenged ballots, and all eligible voters have cast ballots, then the Director of Representation may certify the results

of the election indicating that no exclusive representative has been chosen.

New Rule, R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

**19:11-10.7        Determination of exclusive representative**

The exclusive representative shall be determined by a majority of the valid ballots cast in the election.

Recodified from 19:11-9.5 by R.1995 d.488, effective September 5, 1995.

See: 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).

## **CHAPTER 12**

### **NEGOTIATIONS AND IMPASSE PROCEDURES; MEDIATION, FACT-FINDING, SUPER CONCILIATION AND GRIEVANCE ARBITRATION**

#### **Authority**

N.J.S.A. 34:13A-6(b), 34:13A-5.4(c) and 34:13A-11.

#### **Source and Effective Date**

R.2001 d.214, effective June 4, 2001.

See: 33 N.J.R. 1169(a), 33 N.J.R. 2281(a).

#### **Executive Order No. 66(1978) Expiration Date**

Chapter 12, Negotiations and Impasse Procedures; Mediation, Fact-Finding and Grievance Arbitration, expires on June 4, 2006.

#### **Chapter Historical Note**

Chapter 12, originally Impasses, was filed and became effective prior to September 1, 1969. Subchapter 3, Arbitration, was replaced by a new Subchapter 3, Arbitration, by R.1974 d.345, effective December 18, 1974. See: 6 N.J.R. 457(b), 7 N.J.R. 35(c). Subchapter 1, Mediation, was repealed, and Subchapter 1, Purpose of Procedures, was adopted as emergency new rules, Subchapter 2, Fact-Finding, was repealed, and Subchapter 2, Commencement of Negotiations, was adopted as emergency new rules, Subchapter 3, Arbitration, was recodified as Subchapter 5, and Subchapter 3, Mediation, and Subchapter 4, Fact-Finding, were adopted as emergency new rules, by R.1975 d.10, effective January 20, 1975. See: 7 N.J.R. 78(a). Pursuant to Executive Order No. 66(1978), Chapter 12, Negotiations and Impasse Procedures, was readopted as R.1986 d.354, effective August 7, 1986. See: 18 N.J.R. 1357(a), 18 N.J.R. 1838(c). Pursuant to Executive Order No. 66(1978), Chapter 12, Negotiations and Impasse Procedure; Mediation, Fact-Finding and Arbitration, was readopted as R.1991 d.424, effective July 17, 1991. See: 23 N.J.R. 1296(b), 23 N.J.R. 2524(a). Pursuant to Executive Order No. 66(1978), Chapter 12, Negotiations and Impasse Procedures; Mediation, Fact-Finding and Grievance Arbitration, was readopted as R.1996 d.364, effective July 12, 1996. See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a). Pursuant to Executive Order No. 66(1978), Chapter 12, Negotiations and Impasse Procedures; Mediation, Fact-Finding and Grievance Arbitration, was readopted as R.2001 d.214, effective July 4, 2001. See: Source and Effective Date. See, also, section annotations.

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#### **SUBCHAPTER 1. PURPOSE OF PROCEDURES**

##### **19:12-1.1 Purpose of procedures**

N.J.S.A. 34:13A-5.4(e) provides that the Commission shall adopt such rules as may be required to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasse prior to required budget submission dates. Further, N.J.S.A. 34:13A-6(b) provides that whenever negotiations between the public employer and exclusive representative concerning the terms and conditions of employment shall reach an impasse, the Commission is empowered upon the request of either party to provide mediation to effect a voluntary resolution of the impasse, and in the event of a failure to resolve the impasse by mediation, to recommend or invoke fact-finding with recommendation for settlement. Accordingly, the provisions of this chapter establish a mandatory time period for the commencement of negotiations, utilizing the public employer's required budget submission date as a definitive reference point to afford the parties a full opportunity for negotiations and resolution of impasses which are reached prior to the required budget submission date and for utilization of impasse procedures for parties who reach impasse during alternative time periods. N.J.A.C. 19:12-2.1 through 19:12-4.3 do not apply to negotiations between a public fire or police department as defined by N.J.S.A. 34:13A-15 and an exclusive representative. See N.J.A.C. 19:16.

Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

#### **SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS**

##### **19:12-2.1 Commencement of negotiations**

(a) The parties to a collective negotiations agreement shall commence negotiations for a successor agreement, or in the case of an agreed reopener provision shall commence negotiations pursuant to such reopener provision, no later than 120 days prior to the public employer's required budget submission date. The term "required budget submission date" shall refer to the first budget implementing the successor agreement or the agreement pursuant to the reopener provision, as the case may be. In circumstances where the Commission has not determined the public employer's required budget submission date, the public employer shall notify the employee representative in writing of the required budget submission date no later than 150 days prior to such date. The foregoing provisions



shall not preclude the parties from agreeing to the automatic renewal of the collective negotiations agreement unless either party shall have notified the other party of its intention to terminate or modify the agreement, nor shall it preclude the parties from establishing by mutual agreement an alternative date for the commencement of negotiations.

(b) The party initiating negotiations shall, no later than 15 days prior to the commencement date of negotiations required by this section or any alternate commencement date agreed to by the parties, notify the other party in writing of its intention to commence negotiations on such date.

(c) Nothing in this section shall be construed to abrogate or alter obligations of parties to newly established collective negotiations relationships, whether created by recognition or by certification.

Amended by R.1996 d.364, effective August 5, 1996.

See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

Amended by R.2001 d.214, effective July 2, 2001.

See: 33 N.J.R. 1169(a), 33 N.J.R. 2281(a).

Rewrote (b).

### **SUBCHAPTER 3. MEDIATION**

#### **19:12-3.1 Initiation of mediation**

(a) In the event that a public employer and a certified or recognized employee representative have failed to achieve an agreement through direct negotiation, either the public employer, the employee representative, or the parties jointly, may notify the Director of Conciliation, in writing, of the existence of an impasse and request the appointment of a mediator. An original and four copies of such notification and request shall be filed and shall be signed and dated and shall contain the following information.

1. The name and address of the public employer who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;

2. The name and address of the employee representative who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the employee representative;

3. A description of the collective negotiations unit, including the approximate number of employees in the unit;

4. The dates and duration of negotiations sessions;

5. The termination date of the current agreement, if any;

6. The public employer's required budget submission date;

7. Whether the request is a joint request; and

8. A detailed statement of the facts giving rise to the request, including all issues in dispute.

(b) A blank form for filing a request for the appointment of a mediator will be supplied upon request. Address requests to: Public Employment Relations Commission, P.O. Box 429, Trenton, New Jersey 08625-0429.

(c) Upon receipt of the notification and request, the Director of Conciliation shall appoint a mediator if he or she determines after investigation that mediation is not being resorted to prematurely, that the parties have been unable to reach agreement through direct negotiation, and that an impasse exists in negotiations concerning the terms and conditions of the employment of the affected employees.

Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

#### **19:12-3.2 Appointment of mediator**

The mediator appointed pursuant to this subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's mediation panel, or any other mediator, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement. The parties may jointly request the appointment of a particular mediator, but the Director of Conciliation shall have the express reserved authority to appoint a mediator without regard to the parties' joint request if such is deemed to best effectuate the purposes of the act. If an appointed mediator cannot proceed pursuant to the appointment, another mediator shall be appointed. The appointment of a mediator pursuant to this subchapter shall not be reviewable.

Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

#### **19:12-3.3 Mediator's function**

The function of a mediator shall be to assist all parties to come to a voluntary agreement. A mediator may hold separate or joint conferences as he or she deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the parties. In the absence of an agreement between the parties, the mediator, at any time after appointment, may recommend to the Director of Conciliation that fact-finding procedures should be invoked.

Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

#### **19:12-3.4 Mediator's Confidentiality**

Information disclosed by a party to a mediator in the performance of mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party in any type of proceeding, under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

Amended by R.1991 d.424, effective August 19, 1991.  
See: 23 N.J.R. 1296(a), 23 N.J.R. 2524(a).  
Reference to the New Jersey Employer-Employee Relations Act added.  
Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

#### **19:12-3.5 Mediator's report**

(a) The mediator shall submit one or more confidential reports to the Director of Conciliation which shall, in general, be limited to the following:

1. A statement of the dates and duration of the meetings which have been held and their participants;
2. A brief description of the unresolved issues which existed at the beginning of the mediation effort;
3. A statement of the issues which have been resolved through mediation;
4. A statement of the issues which are still unresolved, if any;
5. A recommendation as to whether or not the Director of Conciliation should invoke fact-finding with recommendations for settlement.

(b) The confidential report(s) submitted by the mediator may be utilized by the Director of Conciliation in considering whether or not fact-finding with recommendations for settlement should be invoked. Such reports shall not be considered in any other proceedings before the Commission or be made available or disclosed to any party or any other tribunal.

Amended by R.1996 d.364, effective August 5, 1996.

See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

### **SUBCHAPTER 4. FACT-FINDING AND SUPER CONCILIATION**

#### **19:12-4.1 Initiation of fact-finding**

(a) Upon a mediator's report of a failure to resolve the impasse by mediation, the Director of Conciliation may invoke fact-finding with recommendations for settlement and appoint a fact-finder. The public employer, the employee representative, or the parties jointly, may request the Director of Conciliation, in writing, to invoke fact-finding. An original and four copies of such request shall be filed, and shall be signed and dated and shall contain the following information.

1. The name and address of the public employer who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;
2. The name and address of the exclusive representative who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the employee representative;
3. The name of the mediator;
4. The number and duration of mediation sessions;
5. The date of the last mediation effort;
6. The unresolved issues to be submitted to a fact-finder; and
7. Whether the request is a joint request.

(b) Forms for filing a petition to request a fact-finding will be supplied upon request. Address requests to: Public Employment Relations Commission, P.O. Box 429, Trenton, New Jersey 08625-0429.

(c) In the absence of a joint request seeking the invocation of fact-finding, the non-filing party may submit a statement or response within seven days of receipt of the request for fact-finding, setting forth the following:

1. Any additional unresolved issues to be submitted to the fact-finder;
2. A statement as to whether it refuses to submit any of the issues listed on the request to invoke fact-finding on the ground that they are not within the required scope of negotiations; and
3. Any other relevant information with respect to the nature of the impasse.

(d) Proof of service on the petitioner of the respondent's statement shall be supplied to the Director of Conciliation. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the invocation of fact-finding as submitted by the requesting party.

Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

#### **19:12-4.2 Appointment of fact-finder**

(a) Upon the invocation of fact-finding pursuant to this subsection, the Director of Conciliation shall communicate simultaneously to each party an identical list of names of three fact-finders. Each party shall eliminate no more than one name to which it objects, indicate its preference regarding the remaining names, and communicate the foregoing to the Director of Conciliation no later than the close of business on the third working day after the date the list was submitted to the parties. If a party has not responded within the time specified, all names submitted shall be deemed acceptable. The Director of Conciliation shall appoint a fact-finder giving recognition to the parties' preferences. The parties may jointly request the appointment of a particular fact-finder, including the person who was appointed as mediator, if any. Notwithstanding the foregoing provisions, the Director of Conciliation shall have the express reserved authority to appoint a fact-finder without the submission of names to the parties, whenever he or she deems it necessary to effectuate the purposes of the act.

(b) The fact-finder appointed pursuant to this subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's fact-finding panel, or any other fact-finder, all of whom shall be considered officers of the Commission for the purposes of assisting the parties to effect a voluntary settlement and/or making findings of fact and recommending the terms of settlement. If an appointed fact-finder cannot proceed pursuant to the appointment, another fact-finder shall be appointed. The appointment of a fact-finder pursuant to this subchapter shall not be reviewable.

Amended by R.1986 d.354, effective September 8, 1986.  
See 18 N.J.R. 1357(a), 18 N.J.R. 1838(c).  
Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

#### **19:12-4.3 Fact-finder's function**

(a) The appointed fact-finder shall, as soon as possible after appointment, meet with the parties or other representatives, make inquiries and investigations, hold hearings, which shall not be

public unless all parties agree to have them public, or take other steps deemed appropriate in order to discharge his or her function.

(b) For the purposes of such hearings, investigations and inquiries, the fact-finder shall have the authority and power to subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, issue subpoenas duces tecum and require the production and examination of any governmental or other books or papers relating to any matter under investigation by or in issue before the fact-finder.

(c) Information disclosed by a party to a fact-finder while functioning in a mediatory capacity shall not be divulged by the fact-finder voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a fact-finder while serving in a mediatory capacity shall be classified as confidential. The fact-finder shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party in any type of proceeding under the New Jersey Employer- Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(d) If the impasse is not resolved, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the hearing as possible.

(e) Any findings of fact and recommended terms of settlement shall be submitted simultaneously in writing to the parties and the Director of Conciliation.

(f) All individually incurred costs shall be borne by the party incurring them. The cost of the services of the fact-finder, including per diem expenses, if any, and actual and necessary travel and subsistence expenses, and any other necessary expenses of the fact-finding proceeding, shall be borne by the Commission unless mandated otherwise by subsequent legislation.

(g) The parties shall meet within five days after receipt of the fact-finder's findings of fact and recommended terms of settlement, to exchange statements of position and try to reach an agreement. In the event of a continuing impasse, the Commission or the Director of Conciliation may take whatever steps are deemed expedient to effect a voluntary settlement of the impasse, including the appointment of a super conciliator.

Amended by R.1991 d.424, effective August 19, 1991.

See: 23 N.J.R. 1296(a), 23 N.J.R. 2524(a).

Confidentiality requirements added at (c).

Amended by R.1996 d.364, effective August 5, 1996.

See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

Amended by R.2004 d.30, effective January 20, 2004.

See: 35 N.J.R. 4049(a), 36 N.J.R. 531(b).

In (g), inserted "including the appointment of a super conciliator" at the end of the second sentence.

#### **19:12-4.4 Appointment of a super conciliator**

(a) In proceedings conducted pursuant to P.L. 2003, c.126 (N.J.S.A. 34:13A-31 et seq.), if the employer and the majority representative do not reach a voluntary negotiated agreement within 20 days after the issuance of the fact-finder's report, the public employer, the employee representative, or the parties jointly may request the Director of Conciliation, in writing, to invoke super conciliation. An original and four copies of such request shall be filed, and shall be signed and dated and shall contain the following information:

1. The name and address of the public employer who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;

2. The name and address of the exclusive representative who is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the employee representative; and

3. Whether the request is a joint request.

(b) Forms for filing a petition to request a super conciliator will be supplied upon request. Address requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(c) The parties may jointly request the appointment of a particular super conciliator, subject to the approval of the Director of Conciliation. Absent an approved joint request, the Director shall designate a super conciliator.

(d) The super conciliator appointed pursuant to this subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's mediation or fact-finding panel, or any other super conciliator approved by the Director of Conciliation, all of whom shall be considered officers of the Commission for the purposes of assisting the parties to effect a voluntary settlement. If an appointed super conciliator cannot proceed pursuant to the appointment, another super conciliator shall be appointed. The appointment of a super conciliator pursuant to this subchapter is not reviewable.

(e) The super conciliator shall have the authority to exercise the powers granted by P.L. 2003, c.126 to institute non-binding procedures deemed appropriate to resolve the parties' negotiations impasse.

(f) The super conciliator, while functioning in a mediatory capacity, shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential which are received or prepared by him or her or to testify with regard to mediation conducted under the Act. Nothing contained in this section shall exempt an individual from disclosing information relating to the commission of a crime.

New Rule, R.2004 d.30, effective January 20, 2004.

See: 35 N.J.R. 4049(a), 36 N.J.R. 531(b).

## **SUBCHAPTER 5. GRIEVANCE ARBITRATION**

### **19:12-5.1 Function of the Commission**

The Commission deems it in the interests of the public to maintain an arbitration panel whose members are available to assist in the arbitration of unresolved grievances. The availability of this service is intended to comply with the requirement of N.J.S.A. 2A:24-5 that the method for naming or appointing an arbitrator provided in the parties' agreement shall be followed. Accordingly, the release of a panel of arbitrators is predicated solely upon a prima facie showing of the parties' intention to utilize the Commission's arbitration service. Parties are referred to the judicial proceedings available under N.J.S.A. 2A:24-3 and N.J.S.A. 2A:24-5 in the event of a dispute regarding arbitrability or the method for naming or appointing an arbitrator. The Commission is not a necessary party to judicial proceedings relating to the arbitration under N.J.S.A. 2A:24-3 or N.J.S.A. 2A:24-5, but shall, upon the written request of a party, furnish to such party at the party's expense, photostatic copies of any papers in the Commission's possession that may be required in any such judicial proceedings.

Amended by R.1996 d.364, effective August 5, 1996.

See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

### **19:12-5.2 Request for submission of panel**

Arbitration under these rules is initiated by written request to the Director of Arbitration. One original and four copies of such request, signed and dated by the requesting party or parties, shall be filed requesting the submission of a panel of arbitrators. The request shall set forth the names and addresses of the parties; the names, titles and telephone numbers of the parties' representatives to contact; the names, addresses and telephone numbers of any attorneys/consultants representing the parties; whether the request is a joint request and a statement identifying the grievance to be arbitrated. The request shall be accompanied by a copy of the arbitration provisions of the parties' agreement. Forms for filing a request for submission of a panel of arbitrators will be supplied upon request. Address requests to: Public Employment Relations Commission, P.O. Box 429, Trenton, New Jersey 08625-0429.

Amended by R.1986 d.354, effective September 8, 1986.  
See: 18 N.J.R. 1357(a), 18 N.J.R. 1838(c).  
"Director of Arbitration" substituted for "director of conciliation".  
Amended by R.1996 d.364 effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

#### **19:12-5.3            Appointment of an arbitrator**

Upon receipt of a written request pursuant to N.J.A.C. 19:12-5.2 (Request for submission of panel), the Director of Arbitration shall submit simultaneously to each party a copy of such request and an identical list of names of at least five persons chosen from the Arbitration Panel. Each party shall have ten days from the mailing date in which to cross off any names to which it objects, number the remaining names in order of preference, and return the list to the Director of Arbitration. If a party does not return the list within the time specified, all arbitrators named shall be deemed acceptable. The Director of Arbitration shall appoint an arbitrator giving recognition to the parties' preferences. If the parties' preferences do not result in agreement upon any of the persons named, the Director of Arbitration shall submit a second list and the procedures set forth above shall be repeated, except that each party shall number at least three names in order of preference. If the arbitrator appointed pursuant to this section declines or is unable to serve, the Director of Arbitration shall have the power to appoint an arbitrator not previously rejected by any party, without submission of any additional list. If the parties have agreed upon a method of appointment different from that set forth above, such method shall be followed. Action of the Director of Arbitration hereunder shall not be reviewable.

Amended by R.1986 d.354, effective September 8, 1986.  
See: 18 N.J.R. 1357(a), 18 N.J.R. 1838(c).  
"Director of Arbitration" substituted for "director of conciliation".  
Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

#### **19:12-5.4            Code of Professional Responsibility for Arbitrators of Labor-Management Disputes**

The arbitrator shall be guided by the objectives and principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

Amended by R.1996 d.364 effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

#### **19:12-5.5            Time and place of hearing**

The arbitrator shall communicate with the parties to arrange for a mutually satisfactory date, time and place for a hearing. In the absence of an agreement, the arbitrator shall have the authority to set the date, time and place for a hearing. The arbitrator shall submit a notice containing arrangements for a hearing within a reasonable time period before hearing.

Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

#### **19:12-5.6            Adjournments**

The arbitrator shall have the authority to grant adjournments for good cause shown, upon either party's application or the arbitrator's own motion.

Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

**19:12-5.7 Arbitration in the absence of a party**

After duly scheduling the hearing, the arbitrator shall have the authority to proceed in the absence of any party who, having failed to obtain an adjournment, does not appear at the hearing.

Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).

**19:12-5.8 Filing of briefs**

The parties at their option or at the request of the arbitrator, may file pre-hearing or post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs. They shall be submitted to the arbitrator along with submission of proof of service on all parties. In the event that post-hearing briefs by the arbitrator are to be submitted, the hearing shall be deemed closed upon receipt of post-hearing briefs by the arbitrator or upon the expiration of the time period allowed for the submission of the post-hearing briefs.

Amended by R.2001 d.214, effective July 2, 2001.  
See: 33 N.J.R. 1169(a), 33 N.J.R. 2281(a)  
In the last sentence, inserted "are to be submitted, the hearing shall be deemed closed upon receipt of post-hearing briefs" preceding "by the arbitrator".

**19:12-5.9 Award**

The arbitrator shall issue an award as soon as possible after the close of hearing, but not more than 45 days thereafter or such other time for date of award that the arbitrator shall fix upon written notice to the parties. The award shall be in writing and shall be submitted to the parties simultaneously. If the parties agree, the arbitrator may submit the award without a written opinion.

Amended by R.1986 d.354, effective September 8, 1986.  
See: 18 N.J.R. 1357(a), 18 N.J.R. 1838(c).  
Deleted text "served simultaneously on ... Employment relations commission" and substituted "submitted directly to ... the parties simultaneously".  
Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).  
Amended by R.2001 d.214, effective July 2, 2001.  
See: 33 N.J.R. 1169(a), 33 N.J.R. 2281(a).  
Deleted "the Public Employment Relations Commission and" preceding "the parties simultaneously".

**19:12-5.10 Subpoena power**

The arbitrator shall have subpoena power in accordance with N.J.S.A. 2A:24-1 et seq.

Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3818(a).

**19:12-5.11 Cost of arbitration**

The cost of such arbitration shall be borne by the parties in accordance with their agreement, and not by the Commission. The arbitrator shall charge pursuant to a per diem fee schedule set forth on a resume sent to the parties when a panel of arbitrators is submitted. The arbitrator shall not change any fee noted on the resume without giving 30 days' written notice to the Commission.

Amended by R.1996 d.364, effective August 5, 1996.  
See: 28 N.J.R. 2797(a), 28 N.J.R. 3813(a).



## **CHAPTER 13**

### **SCOPE OF NEGOTIATIONS PROCEEDINGS**

#### **Authority**

Unless otherwise expressly noted, all provisions of this chapter were adopted pursuant to authority of N.J.S.A. 34:13A-11 and were filed and became effective prior to September 1, 1969. Revisions which deleted the text of this chapter in its entirety were filed and became effective on September 4, 1973, as R.1973 d.248. See: 5 N.J.R. 358(c).

Subsequent revisions which adopted new text for this chapter were filed and became effective on January 20, 1975, as R.1975 d.10. See: 7 N.J.R. 78(a). Further revisions were filed and became effective on August 2, 1977, as R.1977 d.272. See: 9 N.J.R. 298(a), 9 N.J.R. 448(a).

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#### **SUBCHAPTER 1. NATURE OF PROCEEDINGS**

##### **19:13-1.1 Nature of proceedings**

N.J.S.A. 34:13A-5.4(d) provides that the commission shall at all times have the power and duty, upon the request of any public employer or exclusive representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. With respect to the negotiability of a matter sought

to be processed pursuant to a collectively negotiated grievance/arbitration procedure, the commission will not determine whether that matter is within the arbitration clause of an agreement, whether the facts are as alleged by the grievant, whether a contract provides a defense for the employer's alleged action, whether there is a valid arbitration clause in an agreement, or any other similar question. The procedure set forth in this chapter is intended to effectuate that which the commission views as legislative intent to avoid protracted administrative litigation with respect to disputes which normally will involve solely questions of law and policy. It is accordingly anticipated that scope of negotiations proceedings will normally lend themselves to expeditious disposition on the basis of the parties' submissions, which the procedure set forth in this chapter is intended to accommodate.

## **SUBCHAPTER 2. INITIATION OF PROCEEDINGS**

### **19:13-2.1 Who may file**

Any public employer or recognized or certified public employee exclusive representative, either individually or jointly, may initiate scope of negotiation proceedings by filing with the commission an original and four copies of a petition for scope of negotiations determination, together with proof of service of a copy of such petition upon the other party to the collective negotiations relationship. A copy of each such petition filed shall be retained in a public docket until the case is closed.

### **19:13-2.2 Contents of petition for scope of negotiations determination<sup>1/</sup>**

(a) A petition for scope of negotiations determination shall be in writing and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person or persons signing it: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment." Such petition shall contain the following:

1. The full name, address and telephone number of the public employer who is a party to the collective negotiations relationship;

2. The full name, address and telephone number of the recognized or certified public employee exclusive representative who is a party to the collective negotiations relationship;

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<sup>1</sup> A blank form for filing such a petition will be supplied upon request. Address requests to: Public Employment Relations Commission, P.O. Box 429, Trenton, New Jersey 08625.

3. A clear and concise statement of the matter or matters in dispute concerning which a determination by the commission is sought which shall include a statement of the facts in which the dispute arose;

4. A statement that the dispute has arisen:

i. During the course of collective negotiations, and that one party seeks to negotiate with respect to a matter or matters which the other party contends is not a required subject for collective negotiations; or

ii. With respect to the negotiability of a matter or matters sought to be processed pursuant to a collectively negotiated grievance procedure; or

iii. Other than in subparagraphs i and ii above, with an explanation of the circumstances.

### **SUBCHAPTER 3. PROCEDURE**

#### **19:13-3.1 "Petitioner" or "respondent"**

As used in this subchapter, the term "petitioner" shall refer to the party initiating the proceeding or, in the case of a joint petition, the party contending that the disputed matter is within the scope of collective negotiations; the term "respondent" shall refer to the other party to the proceeding.

#### **19:13-3.2 Intervention**

A motion for leave to intervene in proceedings under this chapter shall be filed in writing with the commission or its named designee, stating the grounds upon which an interest in the proceeding is claimed and stating the extent to which intervention is sought. An original and nine copies of such motion shall be filed, together with proof of service of a copy of such motion upon the parties. The commission or its named designee may be ordered permit intervention to such extent and upon such terms as may be deemed just.

#### **19:13-3.3 Informal conference**

An officer of the commission may hold a conference for the purpose of clarifying the issues in dispute, exploring the possibility of voluntary resolution and settlement of the dispute, or for the taking of stipulations of fact.

#### **19:13-3.4 Amendment; withdrawal; dismissal**

(a) The chairman of the commission or such other person designated by the commission may permit the petitioner to amend its petition for scope of negotiations determination at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended petition for scope of

negotiations determination shall conform to the provisions of these rules relating to the original petition for scope of negotiations determination.

(b) A petition for scope of negotiations determination shall be dismissed and the case closed if the petitioner files a notice of withdrawal of the petition for scope of negotiations determination at any time subsequent to the filing of the charge and prior to the issuance of the commission's decision. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) In the absence of a notice of withdrawal, the chairman of the commission or such other person designated by the commission may request the petitioner to file such notice. Where it appears to the chairman of the commission or such other person designated by the commission that the petitioner has no further interest in processing its petition for scope of negotiations determination, that individual may, upon appropriate notice, deem the petition for scope of negotiations determination to have been withdrawn. Unless otherwise stated, a withdrawal and dismissal under this subsection is without prejudice.

#### **19:13-3.5 Briefs**

(a) The scheduling of the submission of briefs is intended to be consistent with the purposes of scope of negotiations procedures as set forth in N.J.A.C. 19:13-1.1 (Nature of proceedings). Therefore whenever possible the petitioner should file an original and nine copies of its brief, together with proof of service of a copy of such brief upon the respondent, simultaneously with the petition for scope of negotiations determination or as soon thereafter as possible. However, absent the grant of an extension of time for such filing, the petitioner's brief shall be filed within 14 days from the filing of the petition for scope of negotiations determination.

(b) Within 14 days after the service of the petitioner's brief, the respondent shall file with the chairman or such other person designated by the commission an original and nine copies of its brief, together with proof of service of a copy of such brief upon the petitioner.

(c) The petitioner may file with the chairman or such other person designated by the commission an original and nine copies of a reply brief within seven days after the service of the respondent's brief, together with proof of service of a copy of such reply brief upon the respondent. No other briefs shall be served or filed without leave of the chairman or such other person designated by the commission.

(d) The chairman or such other person designated by the commission may grant written requests for extension of time within which to file briefs. Such request shall set forth the reasons for the request and the position of the other party regarding the requested extension.

**19:13-3.6 Request for evidentiary hearing**

(a) Any party desiring an evidentiary hearing shall file with the chairman or such other person designated by the commission an original and two copies of a written request therefor, together with proof of service of a copy of such requests upon the other party. Such request shall be filed no later than five days from the receipt of respondent's initial brief. Failure to file a timely request for evidentiary hearing shall constitute a waiver of any right to such hearing. Any such request shall set forth in detail the specific factual issues which the requesting party contends are substantial and material disputed factual issues necessitating an evidentiary hearing. Factual allegations not raised shall be deemed to be not in dispute.

(b) Upon a timely filing of such request, the other party shall within seven days from the service of the request file with the chairman or such other person designated by the commission an original and two copies of a written response to the request, together with proof of service of a copy of the response upon the requesting party. The response shall specifically reply to each factual issue alleged to be in dispute by the requesting party and shall also state what, if any, additional factual issues not raised by the requesting party are alleged to be in dispute. Any factual issue not specifically responded to or raised in the response shall be deemed not to be in dispute.

(c) The request for an evidentiary hearing and response, together with the petition for scope of negotiations determination, shall constitute the pleadings for the evidentiary hearing.

**19:13-3.7 Evidentiary hearings**

(a) If, following receipt of a timely request for an evidentiary hearing and a response pursuant to section 6 of this subchapter, it appears to the chairman of the commission or such other person designated by the commission that there exist substantial and material disputed factual issues, a notice of hearing shall be issued setting forth the time and place for the evidentiary hearing. Evidentiary hearings pursuant to this subchapter shall be conducted by a hearing examiner so designated by the chairman or such other person designated by the commission.

(b) Any such evidentiary hearing conducted pursuant to this subchapter shall be governed by the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and N.J.A.C. 19:14-4.1 through 19:14-8.1 et seq. on unfair practice proceedings, insofar as applicable.

(c) After completion of the evidentiary hearing, or upon the consent of the parties prior to the conclusion of the evidentiary hearing, the hearing examiner shall prepare a recommended report and decision which shall contain findings of fact, conclusions of law, and recommendations as to what disposition of the case should be made by the commission. The hearing examiner shall file the original thereof with the commission, and shall cause a copy to be served upon the parties. Upon service

thereof upon the parties, which shall be complete upon mailing, the case shall be deemed transferred to the commission. The record in the case shall consist of the petition for scope of negotiations determination, the parties' briefs, the request for evidentiary hearing and any statement filed in response thereto, the notice of hearing, the official transcript of the evidentiary hearing, stipulations, exhibits, documentary evidence, and depositions, together with the hearing examiner's recommended report and decision and any exceptions, cross-exceptions, briefs, and answering briefs, which shall be governed by the provisions of N.J.A.C. 19:14-7.3 (Exceptions; cross-exceptions; briefs; answering briefs).

#### **19:13-3.8 Oral argument**

Proceedings under this chapter shall be submitted for the commission's consideration without argument, unless argument is requested by one of the parties within seven days after service of the respondents brief or is ordered by the chairman or such other person designated by the commission, and said request is granted by the commission. Such request shall be made by a separate paper, 10 copies of which shall be filed with the commission, together with proof of service of a copy of such request upon the other party. The chairman or such other person designated by the commission shall notify the parties of the assigned argument date, if permission to argue orally is granted. The petitioner shall open and conclude argument. The commission may terminate the argument at any time it deems the issues adequately argued.

#### **19:13-3.9 Final determination**

Based upon the parties' submissions and oral argument, if any, or where an evidentiary hearing has been conducted, based upon the record in the case as set forth in subsection (b) of N.J.A.C. 19:13-3.7 (Evidentiary hearings), the commission shall issue and cause to be served upon the parties its findings of fact and conclusions of law, including its determination as to whether the disputed matter is a required, permissive, or illegal subject for collective negotiations and, where appropriate, an order reasonably designed to effectuate the purposes of the act.

#### **19:13-3.10 Interim relief**

Upon the filing of a petition for scope of negotiations determination or during the pendency of a scope of negotiations proceeding, the petitioner may apply to the chairman of the commission or such other person designated by the commission for an order requesting the respondent to show cause why specified interim relief should not be granted pending the disposition of the scope of negotiations proceeding. The request for specified interim relief shall be governed by the provisions of N.J.A.C. 19:14-9.1 et seq. on unfair practice proceedings, insofar as applicable.

#### **19:13-3.11 Motion for reconsideration**

A motion for reconsideration may be filed after the commission decision has been rendered in accordance with the provisions of N.J.A.C. 19:14-8.4 (Motion for reconsideration).

## **CHAPTER 14**

### **UNFAIR PRACTICE PROCEEDINGS**

#### **Authority**

N.J.S.A. 34:13A-11.

#### **Source and Effective Date**

R.2000 d.321, effective July 14, 2000.

See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

Executive Order No. 66(1978) Expiration Date

Chapter 14, Unfair Practice Proceedings, expires on July 14, 2005.

#### **Chapter Historical Note**

Chapter 14, Unfair Practice Proceedings, was filed and became effective prior to September 1, 1969.

Subchapter 9, Interim Relief, was adopted as R.1975 d.90, effective April 1, 1975. See: 7 N.J.R. 242(a).

Pursuant to Executive Order No. 66(1978), Chapter 14, Unfair Practice Proceedings, was readopted as R.1995 d.489, effective August 8, 1995. See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Pursuant to Executive Order No. 66(1978), Chapter 14, Unfair Practice Proceedings, was readopted as R.2000 d.321, effective July 14, 2000. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 1 CHARGE**

**19:14-1.1 Who may file**

A charge that any public employer or public employee organization has engaged or is engaging in any unfair practice listed in subsections (a) and (b) of N.J.S.A. 34:13A-5.4 may be filed by any public employer, public employee, public employee organization, or their representatives.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).



#### **19:14-1.2           Where to file**

Such charge shall be filed with the Commission. Upon receipt, such charge shall be date stamped, and assigned a docket number indicating that the charging party is a public employer (CE), one or more individual public employees (CI), or a public employee organization (CO). A copy of each charge shall be retained in a public docket until the case is closed.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-1.3           Form; contents**

(a) Such charge shall be in writing. The party or representative filing the charge shall make this dated and signed certification: "I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief." Such charge shall contain the following:

1. The full name, address and telephone number of the public employer, public employee or public employee organization making the charge (the charging party);
2. The full name, address and telephone number of the public employer or public employee organization against whom the charge is made (the respondent); and
3. A clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the date and place the alleged acts occurred, the names of the persons alleged to have committed such acts, the subsection(s) of the Act alleged to have been violated, and the relief sought.

(b) Forms for filing such charges will be supplied upon request. Address such requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429. Forms may also be downloaded from: <http://www.state.nj.us/perc>

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2000 d.321, effective August 7, 2000.  
See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).  
Rewrote (a), added (b).

#### **19:14-1.4           Number of copies; service**

The charging party shall file an original and nine copies of such charge, together with proof of service of a copy on all other parties. The Director of Unfair Practices will send a copy to the respondent, but the charging party will remain responsible for formal service of the charge.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-1.5           Amendment; withdrawal; dismissal**

(a) Before a complaint issues, the Director of Unfair Practices may permit the charging party to amend a charge upon such terms as may be deemed just. After a complaint issues, any proposed amendment shall be filed with the hearing examiner.

1. Filing, service, and proof of service of an amended charge shall conform to the provisions of these rules relating to the original charge.

(b) An unfair practice charge and any complaint shall be dismissed and the case closed if the charging party files a notice of withdrawal before the respondent serves an answer or a motion for summary judgment. Unless otherwise stated in the notice of withdrawal, a withdrawal and dismissal under this subsection is without prejudice.

(c) Except as provided by (b) above, a charge may be withdrawn by the charging party, and any complaint dismissed and the case closed, only with the consent of the hearing examiner, or if a hearing examiner's report and recommended decision has issued, with the consent of the Chairman. Unless otherwise provided by the Chairman or the hearing examiner, a withdrawal and dismissal under this subsection is without prejudice.

(d) The Director of Unfair Practices or the assigned hearing examiner may request the charging party to withdraw its charge. Where it appears to the Director of Unfair Practices or the assigned hearing examiner that the charging party has no further interest in processing its charge, the Director or hearing examiner may, upon appropriate notice, deem the charge to have been withdrawn. Unless otherwise stated, a withdrawal and dismissal under this subsection is without prejudice.

(e) Within 15 days after the date a charge has been deemed withdrawn, a charging party may file a written motion to reopen with the Director of Unfair Practices. The charging party shall file an original and two copies of such motion, together with proof of service of a copy on all other parties. Any party opposing the motion may file an original and two copies of its response within five days of receipt of the motion, together with proof of service of a copy on all other parties. The motion may be granted on a showing of extraordinary circumstances or to prevent an injustice.

As amended, R.1975 d.89, eff. April 1, 1975.

See: 7 N.J.R. 243(a).

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Amended by R.2000 d.321, effective August 7, 2000.

See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

Rewrote (a) and (c).

#### **19:14-1.6 Processing of charge**

(a) The Director of Unfair Practices will normally assign a charge to a staff member for processing. All parties will be notified of such assignment and will be requested to submit to the staff member:

1. An executed copy of any current or recently expired collective negotiations agreement between the parties; and
2. A written statement of position including an explanation as to why the allegations contained in the charge, if true, would or would not constitute unfair practices on the part of the respondent.

(b) The assigned staff member may request the parties to submit briefs setting forth detailed arguments concerning all relevant legal issues.

(c) The assigned staff member may hold an exploratory conference to clarify the issues, explore the possibility of settlement, or take stipulations of fact. The party or parties or an authorized representative shall attend such conference.

(d) Information disclosed to a staff member in confidence regarding any unfair practice matter shall not be divulged. All files, records, reports, documents or other papers received or prepared by a staff member for purposes of settlement shall be classified as confidential. The staff member shall not produce any confidential records of, or testify in regard to, any settlement discussions conducted by him or her, on behalf of any party in any type of proceeding.

As amended, R.1975 d.89, eff. April 1, 1975.

See: 7 N.J.R. 243(a).

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Amended by R.2000 d.321, effective August 7, 2000.

See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

Added (d).

## **SUBCHAPTER 2                    COMPLAINT WITH NOTICE OF HEARING**

### **19:14-2.1                    Contents; service**

(a) After a charge has been processed, if it appears to the Director of Unfair Practices that the allegations of the charge, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues, the Director shall issue and serve a formal complaint including a notice of hearing before a hearing examiner at a stated time and place. The complaint with notice of hearing shall contain:

1. The allegations of the charge and a statement of the subsection(s) of the Act alleged to have been violated;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held; and
3. A statement of the time and place of any pre-hearing conference. The Director of Unfair Practices or the hearing examiner, upon proper cause shown, may postpone any hearing or pre-hearing conference.

As amended, R.1975 d.89, eff. April 1, 1975.

See: 7 N.J.R. 243(a).

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

### **19:14-2.2                    Amendment; dismissal**

(a) Any complaint may be amended by the hearing examiner to conform to the allegations set forth in any amended charge filed pursuant to N.J.A.C. 19:14-1.5(a).

(b) Any amended complaint may be dismissed pursuant to subsections (b), (c) and (d), or reopened pursuant to subsection (e) of N.J.A.C. 19:14-1.5 (Amendment; withdrawal; dismissal).

As amended, R.1975 d.89, eff. April 1, 1975.

See: 7 N.J.R. 243(a).

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

### **19:14-2.3                    Refusal to issue; appeal**

(a) If, after a charge has been processed, the Director of Unfair Practices refuses, in whole or in part, to issue a complaint, the parties shall be notified in writing of the grounds for such action.

(b) Where no complaint is issued, the charging party may appeal that action by filing an original and nine copies of an appeal with the Commission, together with proof of service of a copy on all other parties, within 10 days from the service of the notice of such refusal to issue. An appeal must be a self-contained document enabling the Commission to rule on the basis of its contents. An appeal may not allege any facts not previously presented, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be presented. Within five days of being served with an appeal, any party opposing the appeal may file an original and nine copies of its response, together with proof of service of a copy on all other parties. The Commission may sustain the refusal to issue a complaint, stating the grounds of its affirmance, or may direct that further action be taken. The Commission's determination shall be served on all parties.

(c) A decision by the Director of Unfair Practices to issue a complaint or to refuse to issue a complaint on a portion of an unfair practice charge may not be appealed pre-hearing except by special permission to appeal pursuant to N.J.A.C. 19:14-4.6.

As amended, R.1975 d.89, eff. April 1, 1975.

See: 7 N.J.R. 243(a).

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2000 d.321, effective August 7, 2000.  
See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).  
Rewrote (b).

## **SUBCHAPTER 3            ANSWER**

### **19:14-3.1            Time for filing; contents; form**

Within 10 days of service on it of the complaint, the respondent shall file an answer. The hearing examiner, upon proper cause shown, may extend the time for filing an answer. The answer shall specifically admit, deny or explain each of the allegations set forth in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a specific denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained shall be deemed to be admitted to be true and shall be so found by the hearing examiner and the Commission, unless good cause to the contrary is shown. The answer shall include a detailed statement of any affirmative defenses. The answer shall be in writing and the party or representative filing the answer shall make this dated and signed certification: "I declare that I have read the above statements and that the statements are true to the best of my knowledge and belief."

As amended, R.1975 d.89, eff. April 1, 1975.  
See: 7 N.J.R. 243(a).  
Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2000 d.321, effective August 7, 2000.  
See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).  
Rewrote section.

### **19:14-3.2            Where to file; number of copies; service**

An original and nine copies of the answer shall be filed with the hearing examiner, together with proof of service of a copy on all other parties.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

### **19:14-3.3            Amendment**

The respondent may amend its answer at any time before the hearing. During or after the hearing the hearing examiner or the Commission may permit the respondent to amend its answer at any time upon such terms as may be deemed just. Filing, service, and proof of service of an amended answer shall conform to the provisions of these rules relating to the original answer.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

## **SUBCHAPTER 4            MOTIONS**

### **19:14-4.1            Motions**

The motion practice set forth in this subchapter applies after a complaint issues. Before then, relief which might be sought through motions should be sought through the appropriate section of N.J.A.C. 19:14-1.5.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2000 d.321, effective August 7, 2000.  
See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

Changed appropriate section to read 19:14-1.5.

#### **19:14-4.2           Where to file**

(a) Except as provided in N.J.A.C. 19:14-4.8 (Motions for summary judgment) or otherwise stated by these rules, all motions and any response to a motion:

1. Made before a case is transferred to the Commission, shall be made in writing to the hearing examiner, or stated orally on the record at the hearing;
2. Made after a case is transferred to the Commission, shall be filed in writing with the Commission.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-4.3           Contents; number of copies; service**

All written motions, referred to in N.J.A.C. 19:14-4.2, shall briefly state the order or relief sought and, if appropriate, shall be supported by affidavits. The moving party shall file an original and two copies of its motion papers, if made to the hearing examiner or Director of Unfair Practices, and an original and nine copies if made to the Commission, together with proof of service of a copy on all other parties.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-4.4           Answering affidavits; oral argument or testimony**

(a) Answering arguments, documents or affidavits, if any, shall be served and filed within five days of service of the motion papers. Filing, service, and proof of service of answering arguments, documents or affidavits shall conform to the provisions of these rules relating to the motion papers.

(b) The Commission or hearing examiner, as applicable, may decide to hear oral argument or take testimony on any motion. The parties shall be notified of the time and place of hearing argument or taking testimony.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-4.5           Rulings**

Rulings and orders by the Commission or its named designee on motions shall be issued in writing and a copy served on each party. Rulings and orders, if announced at the hearing, shall be stated on the record; in all other cases the hearing examiner shall issue rulings and orders in writing and shall serve a copy on each party, or shall make such ruling in the hearing examiner's report and recommended decision, provided that where the hearing examiner has reserved ruling and the case is transferred to the Commission, the Commission shall issue the ruling.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-4.6           Motions and rulings part of the record; appeal on special permission**

(a) All motions, rulings and orders of the hearing examiner shall become part of the record, except that rulings on motions to quash a subpoena shall become a part of the record only upon request of an aggrieved party. Unless expressly authorized by these rules, rulings by the hearing examiner on motions and objections shall not be appealed to the Commission except by special permission of the Commission, but shall be considered by the Commission in reviewing the record, if exception to the ruling or order is included in the statement of exceptions filed with the Commission, pursuant to N.J.A.C. 19:14-7.3 (Exceptions; cross-exceptions; briefs; answering briefs).

(b) A request for special permission to appeal shall be filed in writing within five days from the service of written rulings or statement of oral rulings, and shall briefly state the grounds relied on. An original and nine copies of such request shall be filed with the Chairman, together with proof of service of a copy on all other parties, and, if the request involves a ruling by a hearing examiner, upon that hearing examiner. A party opposing the request may file an original and nine copies of a statement in opposition within five days of service on it of the request for special permission to appeal, together with proof of service of a copy on all other parties. If the Chairman grants special permission to appeal, the proceedings shall not be stayed unless otherwise ordered by the Chairman. The Commission shall consider an appeal on the papers submitted to the Chairman, or on such further submission as it may require.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-4.7 Motion to dismiss complaint; appeal**

If any motion in the nature of a motion to dismiss the complaint in its entirety is granted by the hearing examiner before the filing of a report and recommended decision, the charging party may appeal such action by filing an original and nine copies of an appeal with the Commission, stating the grounds for appeal, together with proof of service of a copy on all other parties. Unless an appeal is filed within 10 days from the date of the order of dismissal, the case shall be closed. A party opposing the request may file an original and nine copies of an answering statement or brief within five days of service on it of the appeal, together with proof of service of a copy on all other parties.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-4.8 Motions for summary judgment**

(a) Any motion in the nature of a motion for summary judgment may only be made after a complaint issues and shall be filed with the Chairman, who shall refer the motion to either the Commission or the hearing examiner. The parties shall be notified in writing of such referral. Any request for a stay of proceedings must accompany the motion for summary judgment.

(b) A motion for summary judgment shall be in writing and accompanied by a brief and may be filed with supporting affidavits. An original and nine copies of the motion and all supporting documents shall be filed with the Chairman, together with proof of service of a copy on all other parties.

(c) Within 10 days of service on it of the motion for summary judgment or such longer period as the Chairman or hearing examiner may allow, the responding party shall serve and file its answering brief and affidavits, if any. Such answering documents shall be served in accordance with (b) above and may include a cross-motion for summary judgment which shall conform to the requirements of (b) above.

(d) If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

(e) If a hearing examiner grants a motion or cross-motion for summary judgment which resolves all issues in the complaint, the hearing examiner shall prepare a report and recommended decision as set forth in N.J.A.C. 19:14-7.1 (Hearing examiner's report and recommended decision and transfer of case to the Commission). If the ruling of the hearing examiner does not fully resolve all issues in the complaint, the ruling shall not be appealed directly to the Commission except by special permission pursuant to N.J.A.C. 19:14-4.6.

(f) The granting of a motion or cross-motion for summary judgment by the Commission resolving all issues in the complaint shall constitute the final decision and order of the Commission. If the decision and order on motion does not resolve all issues in the complaint, the matter shall be referred back to the hearing examiner for a hearing on the remaining issues, unless the Commission shall order such other disposition as it deems reasonable. If the Commission

denies a motion and/or cross-motion for summary judgment, it shall refer the case to the hearing examiner for a full hearing.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

## **SUBCHAPTER 5            INTERVENTION**

### **19:14-5.1            Intervention**

A motion for leave to intervene shall be filed in writing or made orally on the record at hearing. A motion shall state the grounds for intervention and the extent to which intervention is sought. Any party opposing a written motion to intervene may file a written response within five days, together with proof of service on the other parties. If the motion is made orally at hearing, any party opposing intervention may do so orally on the record. Filing, service, and proof of service of a motion and any response shall conform to the provisions of N.J.A.C. 19:14-4.3. The Commission, the Director of Unfair Practices, or the hearing examiner, as the case may be, may by order permit intervention on such terms as may be deemed just.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

## **SUBCHAPTER 6            HEARINGS**

### **19:14-6.1            Who shall conduct; to be public unless otherwise ordered**

The hearing for the purpose of taking evidence upon a complaint shall be conducted by a designated hearing examiner, unless the Commission or any member of the Commission presides. The hearing shall be public unless otherwise ordered by the Commission or the hearing examiner.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

### **19:14-6.2            Prehearing conference**

The hearing examiner assigned to conduct such hearing, or an alternate designee, may hold a pre-hearing conference to clarify the issues, explore the possibility of settlement, or take stipulations of fact. All of the parties or their authorized representatives shall attend any prehearing conference.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

### **19:14-6.3            Duties and powers of hearing examiner**

(a) The hearing examiner shall hear the facts as to whether a respondent has engaged or is engaging in an unfair practice as set forth in the complaint or amended complaint. Before the case is transferred to the Commission, the hearing examiner shall have authority, subject to these rules and the Act, to:

1. Administer oaths and affirmations;
2. Grant applications for subpoenas;
3. Rule upon motions to quash subpoenas;
4. Rule upon offers of proof and receive relevant evidence;

5. Permit and regulate discovery in accordance with regulations promulgated by the Office of Administrative Law, as applicable, and consistent with the purposes of the Act;

6. Regulate the course of the hearing, and if appropriate, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of a witness refusing to answer any proper question;

7. Hold conferences for settling or simplifying the issues;

8. Dispose of procedural requests, motions, or similar matters, including motions for summary judgment or to amend pleadings; also to dismiss complaints in whole or in part; to order hearings reopened; and upon motion, order proceedings consolidated or severed prior to issuance of the hearing examiner's report and recommended decision.

9. Approve a stipulation by all parties dispensing with a verbatim transcript of record of the oral testimony adduced at the hearing, and which will also include a waiver of the parties' right to file with the Commission exceptions to the findings of fact (but not to conclusions of law or recommended orders) which the hearing examiner shall make in a report and recommended decision;

10. Request the parties to state their positions concerning any issue; and

11. Take any other necessary action authorized by these rules.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-6.4 Unavailability of hearing examiner**

(a) If the hearing examiner becomes unavailable, the Director of Unfair Practices or the Commission may designate another hearing examiner for the purpose of further hearing or issuance of a report and recommended decision on the record as made, or both. The parties shall be notified of that designation.

(b) If the hearing examiner becomes unavailable after the hearing has been conducted and before a report and recommended decision has been issued, the Commission may transfer the case to itself to issue a decision and order.

Amended by R.1995 d. 489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Amended by R.2000 d.321, effective August 7, 2000.

See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

In (a), added a second sentence.

#### **19:14-6.5 Rights of parties**

(a) Any party shall have the right to appear at such hearing in person or by authorized representative to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing examiner. Five copies of documentary evidence shall be submitted, unless the hearing examiner permits a reduced number of copies upon good cause shown.

(b) If a transcript of the proceedings is ordered before a recommended decision has been issued, the party ordering the transcript shall, at the time of ordering, notify the hearing examiner that a transcript has been ordered and shall have the reporter service file a copy of the transcript with the hearing examiner for inclusion in the record.

Amended by R.1990 d.406, eff. August 20, 1990.

See: 22 N.J.R. 1910(a), 22 N.J.R. 2531(b).

Party ordering a transcript required to have reporter service file a copy with the Commission.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).



#### **19:14-6.6 Rules of evidence not controlling**

(a) The parties shall not be bound by rules of evidence whether statutory, common law, or adopted by the Rules of Court. All relevant evidence is admissible, except as otherwise provided by this rule. The hearing examiner may in the exercise of discretion exclude any evidence if its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion. The hearing examiner shall give effect to the rules of privilege recognized by law. Notice may be taken of administratively noticeable facts and of facts within the Commission's specialized knowledge. The material noticed shall be referred to in the hearing examiner's report and recommended decision, and any party may contest the material so noticed by filing timely exceptions pursuant to N.J.A.C. 19:14-7.3 (exceptions; cross-exceptions; briefs; answering briefs).

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Amended by R.2000 d.321, effective August 7, 2000.

See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

Rewrote section.

#### **19:14-6.7 Stipulations of fact**

In any proceeding stipulations of fact may be submitted. The parties may submit a stipulation of facts to the Commission for a decision without a hearing. The parties may also agree to waive a hearing examiner's report and recommended decision.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-6.8 Prosecution by charging party; burden of proof**

The charging party shall prosecute the case and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. The respondent shall have the burden of establishing any affirmative defenses in accordance with law.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-6.9 Objection to conduct of hearing; waiver of objections**

(a) Any objection to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing and accompanied by a short statement of the grounds for objection, and will be included in the record.

(b) An objection shall not be deemed waived by further participation in the hearing. An objection not duly raised before a hearing examiner shall be deemed waived unless the Commission excuses the failure to raise the objection because of extraordinary circumstances.

(c) During a hearing, the Commission will not review any objection to the rulings of a hearing examiner except by special permission to appeal pursuant to N.J.A.C. 19:14-4.6(b). Review by the Commission shall not stay the conduct of the hearing unless otherwise ordered by the Commission.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-6.10 Oral argument at hearing; briefs; proposed findings**

Any party shall be entitled, upon request, to a reasonable period before the hearing closes for oral argument, which shall be included in the official transcript of the hearing. Any party shall be entitled, upon request made before the hearing closes, to file a brief or proposed findings and conclusions, or both. The hearing examiner shall fix a reasonable time for such filing and may grant extensions of time for good cause shown. No request for an extension of time will be considered unless received before the expiration of the time fixed for the filing of briefs or proposed findings and conclusions, unless expressly authorized by the hearing examiner, and accompanied by proof of service of a copy on all other parties. Two copies of any brief or proposed findings and conclusions shall be filed with the hearing examiner, together with proof of service of a copy on all other parties.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Amended by R.2000 d.321, effective August 7, 2000.

See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

Rewrote section.

#### **19:14-6.11 Continuance or adjournment**

In the hearing examiner's discretion, the hearing may be continued from day to day, or adjourned to a later date or different place, by announcement at the hearing by the hearing examiner, or by other appropriate notice to the parties.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-6.12 Misconduct at hearing**

Misconduct at any hearing before a hearing examiner or the Commission shall be grounds for summary exclusion from the hearing. Misconduct of an aggravated character by a representative of a party shall be grounds for suspension or disbarment by the Commission from further practice before it after due notice and hearing.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-6.13 Settlement or adjustment of issues**

(a) In any proceeding conducted pursuant to this chapter, all interested parties shall have an opportunity to submit to the Commission or its designated officer for consideration, facts, arguments, offers of settlement, or proposals of adjustment.

(b) In any proceeding conducted pursuant to this chapter, any facts, admissions against interest, offers of settlement or proposals of adjustment shall not be admissible unless mutually agreed by all parties. No Commission officer shall be permitted to testify in any proceeding with respect to such submissions.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

### **SUBCHAPTER 7 HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION AND TRANSFER OF CASE TO THE COMMISSION**

#### **19:14-7.1 Hearing examiner's report and recommended decision and transfer of case to the Commission**

After the hearing or upon the parties' consent before the conclusion of the hearing, the hearing examiner shall prepare a report and recommended decision which shall contain findings of fact, conclusions of law, and recommendations as to what disposition of the case should be made, including, where appropriate, a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act. The hearing examiner shall file the original with the

Commission, and shall serve a copy on the parties. Service shall be complete upon mailing and the case shall then be deemed transferred to the Commission.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-7.2 Record in the case**

The record shall consist of the charge and any amendments; the complaint and any amendments; notice of hearing; answer and any amendments; motions; rulings; orders; any official transcript of the hearing; and stipulations, exhibits, documentary evidence, and depositions admitted into evidence; together with the hearing examiner's report and recommended decision and any exceptions, cross- exceptions, and briefs and answering briefs in support of, or in opposition to, exceptions and cross-exceptions.

Amended by R.1990 d.406, effective August 20, 1990.  
See: 20 N.J.R. 1910(a), 22 N.J.R. 2531(b).

Party ordering a transcript required to have reporter service file a copy with the Commission.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Amended by R.2000 d.321, effective August 7, 2000.  
See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

Rewrote section.

#### **19:14-7.3 Exceptions; cross-exceptions; briefs; answering briefs**

(a) Within 10 days of service on it of the hearing examiner's report and recommended decision or such longer period as the Commission may allow, any party may file with the Commission an original and nine copies of exceptions to the report and recommended decision or to any other part of the record or proceedings (including rulings upon motions or objections), together with an original and nine copies of a brief in support of the exceptions. Any party may, within the same period, file an original and nine copies of a brief in support of the report and recommended decision. A request for an extension of time to file exceptions or briefs shall be in writing and shall state the other parties' positions with respect to such request. Filings under this subsection shall be accompanied by proof of service of a copy on all other parties.

(b) Each exception shall specify each question of procedure, fact, law, or policy to which exception is taken; identify that part of the report and recommended decision to which objection is made; designate by precise page citation the portions of the record relied on; state the grounds for the exception; and include the citation of authorities unless set forth in a supporting brief. Any exception which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with these requirements may be disregarded. If a transcript of the proceedings is ordered for the purposes of filing exceptions to a recommended decision, the ordering party shall have the reporter service file a copy of the transcript with the Commission for inclusion in the record.

(c) Any brief in support of exceptions shall not contain any matter outside the scope of the exceptions and shall contain the points of fact and law relied on in support of the position taken on each question, with specific page references to the transcript and the legal or other material relied on.

(d) Within five days of service on it of exceptions or such longer period as the Commission may allow, a party opposing the exceptions may file an original and nine copies of an answering brief limited to the questions raised in the exceptions and in the brief in support of exceptions, together with proof of service of a copy on the other parties. Filing, service, and proof of service of request for an extension of time shall conform to (a) above.

(e) Within five days of service on it of exceptions or such longer period as the Commission may allow, any party that has not previously filed exceptions may file an original and nine copies of cross-exceptions to any portion of the report and recommended decision, together with a supporting brief, in accordance with (b) above, together with proof of service of a copy on the other parties. Filing, service, and proof of service of a request for an extension of time shall conform to (a) above.

(f) Within five days of service on it of cross-exceptions or such longer period as the Commission may allow, any other party may file an original and nine copies of an answering brief in accordance with (c) above, limited to the questions raised in the cross-exceptions, together with proof of service of a copy on the other parties. Filing, service, and proof of service of a request for an extension of time shall conform to (a) above.

(g) No further briefs shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on the other parties.

(h) Any matter not included in exceptions or cross-exceptions may not be urged before the Commission in any proceeding.

Amended by R.1990 d.406, effective August 20, 1990.

See: 22 N.J.R. 1910(a), 22 N.J.R. 2531(b).

Party ordering a transcript required to have reporter service file a copy with the Commission.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Amended by R.2000 d.321, effective August 7, 2000.

See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

Rewrote (b).

## **SUBCHAPTER 8                   PROCEDURE BEFORE THE COMMISSION**

### **19:14-8.1                   Action by the Commission; decision in the absence of exceptions**

(a) The Commission shall adopt, reject or modify the hearing examiner's report and recommended decision. The Commission may decide the matter upon the record or after oral argument. It may also reopen the record and receive further evidence.

(b) If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

### **19:14-8.2                   Oral argument**

Any request for oral argument before the Commission shall be in writing on a separate piece of paper and filed simultaneously with the statement of any exceptions or cross-exceptions filed pursuant to N.J.A.C. 19:14-7.3 (Exceptions; cross-exceptions; briefs; answering briefs), together with proof of service of a copy on all other parties. The Commission shall notify the parties if the request for oral argument is granted and of the time and place of any oral argument.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

### **19:14-8.3                   Hearings before the Commission**

Whenever necessary to effectuate the purposes of the Act or to avoid unnecessary costs or delay, the Commission may order that a complaint and any related proceeding be transferred to and continued before it or any member or members of the Commission. In such case, the provisions of this chapter shall govern, as applicable.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-8.4 Motions for reconsideration**

After a Commission decision has been issued, a party may move for reconsideration. Any motion pursuant to this section shall be filed within 15 days of service of the Commission decision, together with proof of service of a copy on all other parties. The movant shall specify the extraordinary circumstances warranting reconsideration and the pages of the record it relies on. Any party opposing reconsideration may file a response within five days of service on it of the motion, together with proof of service of a copy on all other parties. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Commission decision unless otherwise ordered by the Commission. A motion for reconsideration need not be filed to exhaust administrative remedies.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Amended by R.2000 d.321, effective August 7, 2000.

See: 32 N.J.R. 1506(a), 32 N.J.R. 2928(a).

Rewrote section.

### **SUBCHAPTER 9 INTERIM RELIEF**

#### **19:14-9.1 Applicability of subchapter**

This subchapter shall be applicable to requests for interim relief in both unfair practice proceedings under this chapter and in scope of negotiations proceedings pursuant to N.J.A.C. 19:13-3.10. Any order issued pursuant to this subchapter is interlocutory.

Amended by R.1995 d.489, effective September 5, 1995.

See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

Amended by R.2003 d.64, effective February 3, 2003.

See: 34 N.J.R. 3076(a), 35 N.J.R. 631(a).

Added last sentence.

#### **19:14-9.2 When to file; form**

(a) Upon or after the filing of an unfair practice charge or a petition for scope of negotiations determination, the charging party or petitioner may apply to the Chairman for an order requiring the respondent to show cause why specified interim relief should not be granted pending the final disposition of the proceeding by the Commission.

(b) The application for interim relief shall be by order to show cause, shall state the relief sought, and shall be supported by an affidavit or verified charge or petition if it relies on facts not already in the record.

(c) The order to show cause shall be returnable at such time and place as the Chairman or such other person designated by the Commission shall fix in the order. The order to show cause shall not include any temporary restraints except as permitted by and pursuant to (e) and (f) below.

(d) The charging party shall serve the order to show cause and any supporting affidavits upon the respondents at least 10 days before the return date and in a manner prescribed by N.J.A.C. 19:10-2.3 (Service of pleading and other process; proof of service), unless the Chairman or the Commission's designee orders a shorter or longer time or other manner of service. If the order to show cause issues upon the filing of the charge or petition, a copy of such charge or petition shall be served simultaneously with the order and supporting affidavits.

(e) The order to show cause shall not include any temporary restraints unless:

1. The respondent has been notified of and consents to the application; or

2. It appears from the specific facts shown by affidavit or other verified pleading that the charging party or petitioner has a likelihood of success on the merits and that the charging party or petitioner will probably suffer immediate and irreparable harm before notice can be given and a hearing on the application can be held.

(f) Any order to show cause issued without notice which includes temporary restraints shall provide that the respondents may move for dissolution or modification of the restraints on two days' notice or on such other notice as may be ordered. The order to show cause may provide that the restraints shall continue until further order of the Commission or its designee or the Chairman.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-9.3            Briefs**

(a) By no later than five days before the return date of the order to show cause, unless otherwise ordered by the Chairman or the Commission's designee, the charging party or petitioner shall file an original and two copies of its brief together with proof of service of a copy on all other parties. The brief shall explain clearly the nature of the proceeding, the interim relief sought, and why such relief should be ordered under the applicable legal standards.

(b) By no later than two days before the return date, unless otherwise ordered by the Chairman or the Commission's designee, the respondent shall file an original and two copies of its answering brief and any opposing affidavits or verified pleadings, together with proof of service of a copy on all other parties. The answering brief shall set forth the grounds of opposition, together with copies of any papers relied on which are not in the charging party's or petitioner's submissions. If no answering brief is filed, the application may be considered to be unopposed.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-9.4            Hearing on return date**

A hearing shall be conducted on the return date of the order to show cause and on the return date of the respondent's motion to dissolve or modify the temporary restraints, unless otherwise ordered by the Chairman or the Commission's designee. The parties shall have the right to argue orally and the hearer may permit testimony. The Chairman or the Commission's designee shall conduct such hearings.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

#### **19:14-9.5            Decision; enforcement**

(a) An interim relief decision in proceedings under this subchapter shall be in writing and shall include findings of fact and conclusions of law. Any order granting interim relief and any restraining order shall set forth the reasons for its issuance; shall be specific in terms, shall describe in reasonable detail the act or acts sought to be restrained; and shall apply to only such parties and such of their officers, agents, employees, and attorneys, and such persons in active concert or participation with them, as receive actual notice of the order by service in the manner prescribed by N.J.A.C. 19:10-2.3.

(b) Pursuant to N.J.S.A. 34:13A-5.4(f) and Court rules, the Commission shall have the power to apply to the Superior Court for an appropriate order enforcing any order issued under this subchapter.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).  
Amended by R.2003 d.64, effective February 3, 2003.  
See: 34 N.J.R. 3076(a), 35 N.J.R. 631(a).  
In (a), substituted "An interim relief" for "A final"; rewrote (b).

## **SUBCHAPTER 10            COMPLIANCE AND ENFORCEMENT**

### **19:14-10.1            Applicability**

The provisions of this subchapter shall be applicable to orders issued by the Commission or persons designated to act for the Commission in unfair practice proceedings pursuant to N.J.S.A. 34:13A-5.4(c) and (f) and this chapter, and in scope of negotiations proceedings pursuant to N.J.S.A. 34:13A-5.4(d) and (f) and N.J.A.C. 19:13.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

### **19:14-10.2            Procedures for compliance and enforcement**

(a) The Chairman or the Commission's designee shall have the authority and discretion to take reasonable action to ascertain if compliance with the Commission's order has been or is being achieved. Such action may include, but shall not be limited to, soliciting information from the party to whom the order is directed or any other party, convening a conference among one or more of the parties to the proceeding; conducting an investigation and/or a hearing; or taking such other action reasonably designed to determine if compliance with the Commission's order has occurred.

(b) The Commission may at any time in the exercise of its discretion institute proceedings for enforcement of its order pursuant to court rules. The Commission may institute such proceedings without regard to the provisions of (a) above.

(c) Filing a notice of appeal with the Appellate Division of the Superior Court from a decision and order of the Commission, or some other action designed to seek a review of the Commission's decision and order, shall not relieve the party to whom the order is directed from compliance with its requirements unless so ordered by the Commission or the reviewing court.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

### **19:14-10.3            Request for compliance and enforcement**

(a) Any party to the proceeding which resulted in the order for which compliance is sought may request that the Commission seek compliance with and enforcement of any Commission order.

(b) Such a request shall normally take the form of a motion addressed to the Chairman and shall be accompanied by affidavits, as appropriate, setting forth the facts regarding the noncompliance of the party to whom the order was directed. An original and two copies of such request shall be filed with the Chairman, together with proof of service of a copy on all other parties.

(c) Within five days of service on it of the request for action to ascertain compliance and enforcement, the party to whom the order is directed may respond to the request. Such response may include affidavits or other submissions. An original and two copies of the response and supporting submissions shall be filed with the Chairman, together with proof of service of copies of such documents on all other parties.

Amended by R.1995 d.489, effective September 5, 1995.  
See: 27 N.J.R. 2555(a), 27 N.J.R. 3387(a).

## **CHAPTER 15**

### **SUBPOENAS**

#### **Authority**

Unless otherwise expressly noted, all provisions of this chapter were adopted pursuant to authority of N.J.S.A. 34:13A-11 and were filed and became effective prior to September 1, 1969. Subsequent revisions were filed and became effective on August 2, 1977, as R.1977 d.272. See: 9 N.J.R. 298(a), 9 N.J.R. 448(a).

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#### **SUBCHAPTER 1. GENERAL PROVISIONS**

##### **19:15-1.1 Issuance of subpoena**

The commission or any designated officer thereof may issue subpoenas to require the attendance of witnesses in the State and the production of books and papers at a proceeding held under the provisions of these rules.

##### **19:15-1.2 Application for subpoena**

- (a) A party may file a written application for subpoena with the commission or any designated officer thereof.
- (b) The application for subpoena need not name the witness or the books and papers sought.
- (c) Notice of an application for subpoena need not be communicated to the parties.



(d) The commission or any designated officer shall furnish all subpoenas requested.

(e) The party requesting the subpoena shall be responsible for service in accordance with the provisions of N.J.A.C. 19:10-2.3 (Service of pleading and other process; proof of service).

#### **19:15-1.3 Failure to comply with subpoena**

(a) No person served with a subpoena issued in accordance with this provision of this chapter shall refuse or neglect to appear or testify or to produce books and papers relevant to such investigation, inquiry or hearings as commanded in such subpoena without the timely filing of a petition to quash a subpoena, with the commission or designated officer.

(b) Failure to comply with, or neglect of a subpoena issued by the commission or an officer thereof pursuant to N.J.A.C. 19:15-1.1 (Issuance of subpoena) may be certified by the commission to a court of competent jurisdiction for an order of compliance.

#### **19:15-1.4 Fees**

(a) The fees for witnesses for attendance and travel shall be paid from appropriations made to the Division of Public Employment Relations to those witnesses subpoenaed by the commission or any officer thereof.

(b) The fees for witnesses for attendance and travel shall be paid by the party requesting the subpoena.

### **SUBCHAPTER 2. PETITION TO QUASH**

#### **19:15-2.1 Petition to quash**

(a) A petition to quash a subpoena may be filed with the commission or designated officer not later than five days from the date of service of the subpoena.

(b) The commission or designated officer shall give notice of the filing of a petition to quash to the applicant for subpoena.

#### **19:15-2.2 Ruling on petition to quash**

(a) The commission or designated officer may quash a subpoena on the ground that the subpoena does not reasonably relate to any matter under investigation, inquiry or hearing, or the subpoena does not describe with sufficient particularity the evidence sought, or that the evidence sought from the witness is privileged under the law or these rules.

(b) The commission or designated officer shall make a statement as to the basis for the ruling.

**19:15-2.3 Timeliness of petition to quash**

A failure to file a timely petition to quash shall bar the filing of a subsequent petition to quash a subpoena.

**19:15-2.4 Inclusion in the record**

An aggrieved party may request that the petition to quash a subpoena, the answer thereto and the commission's or designated officer's statement of the basis for the ruling, as the case may be, be made a part of the record.

## **CHAPTER 16**

### **NEGOTIATIONS, IMPASSE PROCEDURES AND COMPULSORY INTEREST ARBITRATION OF LABOR DISPUTES IN PUBLIC FIRE AND POLICE DEPARTMENTS**

#### **Authority**

N.J.S.A. 34:13A-6(b), 34:13A-5.4(e), 34:13A-11 and 34:13A-16.5.

#### **Source and Effective Date**

R.2001 d.215, effective June 4, 2001.

See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

#### **Executive Order No. 66(1978) Expiration Date**

Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, expires on June 4, 2006.

#### **Chapter Historical Note**

Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was filed and became effective prior to September 1, 1969. Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was repealed by R.1977 d.272. See: 9 N.J.R. 298(a), 9 N.J.R. 448(a), effective August 2, 1977. Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was adopted as new rules by R.1977 d.349, effective September 16, 1977. See: 9 N.J.R. 350(a), 9 N.J.R. 497(a). Pursuant to Executive Order No. 66(1978), Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was readopted as R.1986 d.355, effective August 7, 1986. See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a). Pursuant to Executive Order No. 66(1978), Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was readopted as R.1991 d.425, effective July 17, 1991. See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a). Subchapter 8, Appeals, was adopted as R.1996 d.240, effective May 20, 1996. See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a). Pursuant to Executive Order No. 66(1978), Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was readopted as R.1996 d.365, effective July 12, 1996. See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a). Pursuant to Executive Order No. 66(1978), Chapter 16, Negotiations, Impasse Procedures and Compulsory Interest Arbitration of Labor Disputes in Public Fire and Police Departments, was readopted as R.2001 d.215, effective June 4, 2001. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 1. PURPOSE OF PROCEDURES**

**19:16-1.1 Purpose of procedures**

(a) The rules of this chapter provide for implementation of the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c.425, an Act which provides for compulsory interest arbitration of labor disputes in public fire and police departments and supplements the New Jersey Employer-Employee Relations Act, as amended N.J.S.A. 34:13A-1.1 et seq.

(b) N.J.S.A. 34:13A-5.4(e) provides that the Commission shall adopt such rules as may be required to regulate the time of commencement of negotiations and of institution of

impasse procedures, and section 8 of the Police and Fire Public Interest Arbitration Reform Act provides that the Commission shall adopt rules and regulations to effectuate the purposes of that Act. Further, N.J.S.A. 34:13A-16(a) and (b) provide that whenever negotiations between a public fire or police department and an exclusive representative concerning the terms and conditions of employment shall reach an impasse, the Commission is empowered upon the request of either party or upon its own motion to provide mediation to effect a voluntary resolution of the impasse, and in the event of a failure to resolve the impasse by mediation, to invoke fact-finding with recommendations for settlement at the request of either party.

(c) Additionally, the act provides for the submission of issues in dispute either to a mutually agreed and approved final and binding arbitration procedure or conventional arbitration, as set forth in N.J.S.A. 34:13A- 16d(2).

(d) Accordingly, the provisions of this chapter establish a mandatory time period for the commencement of negotiations and for institution of impasse procedures, including compulsory interest arbitration of unresolved impasses and appeals of arbitration awards. Also provided is a procedure for Commission determination of disputes regarding the identification of issues as economic or non-economic.

Amended by R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Added references to the Act and in (d) inserted "and appeals of arbitration awards".

Amended by R.2001 d.215, effective July 2, 2001.

See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

In (c), substituted "conventional arbitration, as" for "the final offer procedure".

## **SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS**

### **19:16-2.1 Commencement of negotiations**

(a) The parties shall commence negotiations for a new or successor agreement, or in the case of an agreed reopener provision, shall commence negotiations pursuant to such reopener provision, at least 120 days prior to the day on which their collective negotiations agreement is to expire. The parties shall meet at least three times during that 120-day period. The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiations agreement is to expire. By mutual consent, the parties may agree to extend the period during which the second and third meetings are required to take place beyond the day on which their collective negotiations agreement is to expire. A violation of these requirements shall constitute an unfair practice and the violator shall be subject to an interim relief order requiring such negotiations and any other relief the Commission deems appropriate. The foregoing provisions shall not preclude the parties from agreeing to the automatic renewal of a collective negotiations agreement unless either party shall have notified the other party of its intention to terminate or modify the agreement.

(b) The party initiating negotiations shall, no later than 15 days prior to the commencement date of negotiations required by this subchapter, notify the other party in writing of its intention to commence negotiations on such date, and shall simultaneously file with the Commission a copy of such notification. Forms for filing such petitions will be supplied upon request. Address such requests to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.

(c) Nothing in this subchapter shall be construed to abrogate or alter obligations of parties to newly established collective negotiations relationships, whether created by recognition or by certification.

Amended by R.1996 d.240, effective May 20, 1996.  
See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).  
Rewrote (a).

### **SUBCHAPTER 3.            MEDIATION**

#### **19:16-3.1            Initiation of mediation**

(a)        In the event that a public employer and an exclusive employee representative have failed to achieve an agreement through direct negotiations, either the public employer, the employee representative, or the parties jointly, may notify the Director of Conciliation, in writing, of the existence of an impasse and request the appointment of a mediator. An original and four copies of such notification and request shall be filed, and shall be signed and dated and shall contain the following information:

1.        The name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;
2.        The name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the employee representative;
3.        A description of the collective negotiations unit, including the approximate number of employees in the unit;
4.        The dates and duration of negotiations sessions;
5.        The termination date of the current agreement, if any;
6.        The public employer's required budget submission date;
7.        Whether the request is a joint request;
8.        A detailed statement of the facts giving rise to the request, including all issues in dispute, identifying the issues as economic or non-economic within the meaning of N.J.S.A. 34:13A-16(f)(2); and
9.        A statement as to whether a dispute exists as to the negotiability of any of the unresolved issues.

(b)        A blank form for filing a request for mediation will be supplied upon request. Address requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(c)        Upon receipt of the notification and request, the Director of Conciliation shall appoint a mediator if he or she determines after investigation that mediation is not being resorted to prematurely, that the parties have been unable to reach an agreement through direct negotiations, and that an impasse exists in negotiations.

(d)        The Commission or the Director of Conciliation may also initiate mediation at any time in the absence of a request in the event of the existence of an impasse.

Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

#### **19:16-3.2 Appointment of a mediator**

The mediator appointed pursuant to the subchapter may be a member of the Commission, an officer of the Commission, a member of the Commission's mediation panel, or any other appointee, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement. The parties may jointly request the appointment of a particular mediator, but the Director of Conciliation shall have the authority to appoint a mediator without regard to the parties' joint request. If an appointed mediator cannot proceed pursuant to the appointment, another mediator shall be appointed. The appointment of a mediator pursuant to this subchapter shall not be reviewable in any other proceeding before the Commission.

Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

#### **19:16-3.3 Mediator's function**

The function of a mediator shall be to assist the parties to reach a voluntary agreement. A mediator may hold separate or joint conferences as he or she deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the parties.

#### **19:16-3.4 Mediator's confidentiality**

Information disclosed by a party to a mediator in the performance of mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party in any type of proceeding, under the New Jersey Employer-Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

Amended by R.1991 d.425, effective August 19, 1991.  
See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a).  
Reference to the New Jersey Employer-Employee Relations Act added.  
Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

#### **19:16-3.5 Mediator's report**

(a) The mediator shall submit one or more confidential reports to the Director of Conciliation which shall, in general, be limited to the following:

1. A statement of the dates and duration of the meetings which have been held and their participants;
2. A brief description of the unresolved issues which existed at the beginning of the mediation effort;
3. A statement of the issues which have been resolved through mediation;
4. A statement of the issues which are still unresolved if any; and

5. A statement setting forth any other relevant information in connection with the mediator's involvement in the performance of his or her functions.

Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

#### **SUBCHAPTER 4. FACT-FINDING**

##### **19:16-4.1 Initiation of fact-finding**

(a) If the parties fail to resolve the impasse through mediation, the public employer, the employee representative, or the parties jointly may request the Director of Conciliation, in writing, to invoke fact-finding and upon receipt of such request, fact-finding with recommendations for settlement shall be invoked. An original and four copies of such request shall be filed with the Director of Conciliation, together with proof of service upon the other party. The request shall be signed and dated and shall contain the following information:

1. The name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;

2. The name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the exclusive representative;

3. A description of the collective negotiations unit, including the approximate number of employees in the unit;

4. The name of the mediator;

5. The number and duration of mediation sessions;

6. The date of the last mediation effort;

7. The termination date of the current agreement, if any;

8. The public employer's required budget submission date;

9. Whether the request is a joint request;



10. A detailed statement of the facts giving rise to the request, including all issues in dispute, identifying the issues as economic or non-economic within the meaning of N.J.S.A. 34:13A-16(f)(2); and

11. A statement as to whether a dispute exists as to the negotiability of any of the unresolved issues.

(b) A blank form for filing a request for fact-finding will be supplied upon request. Address requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(c) In the absence of a joint request seeking the invocation of fact-finding, the non-filing party may submit a statement or response within seven days of receipt of the request for fact-finding, setting forth the following:

1. Any additional unresolved issues to be submitted to the fact-finder;

2. A statement as to whether it disputes the identification of any issues as economic or non-economic;

3. A statement as to whether it refuses to submit any of the issues listed on the request to fact-finding on the ground that such issue is not within the required scope of negotiations; and

4. Any other relevant information with respect to the nature of the impasse.

(d) Proof of service on the petitioner of the respondent's statement shall be supplied to the Director of Conciliation. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the invocation of fact-finding as submitted by the requesting party.

(e) Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission a petition for scope of negotiations determination pursuant to chapter 13 of these rules. This petition must be filed within 10 days of receipt of the request for fact-finding or within five days after receipt of the response to a request for fact-finding. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to fact-finding.

Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

#### **19:16-4.2 Appointment of a fact-finder**

(a) Upon the invocation of fact-finding pursuant to this subchapter, the Director of Conciliation shall communicate simultaneously to each party an identical list of names of three fact-finders. Each party shall eliminate no more than one name to which it objects, indicate the order of its preference regarding the remaining names, and communicate the foregoing to the Director of Conciliation no later than the close of business on the third working day after the date the list was submitted to the parties. If a party has not responded within the time specified, all names submitted shall be deemed acceptable. The Director of Conciliation shall appoint a fact-finder giving recognition to the parties' preferences. The parties may jointly request the appointment of a particular fact-finder, including the person who was appointed as mediator, if

any. Notwithstanding these provisions, the Director of Conciliation shall have the express reserved authority to appoint a fact-finder without the submission of names to the parties whenever he or she deems it necessary to effectuate the purposes of the Act.

(b) The fact-finder appointed pursuant to this subchapter may be a member of the Commission, an officer of the Commission, a member of the Commission's fact-finding panel, or any other appointee, all of whom shall be considered officers of the Commission for the purposes of assisting the parties to effect a voluntary settlement and/or making findings of fact and recommending the terms of settlement. If an appointed fact-finder cannot proceed pursuant to the appointment, another fact-finder shall be appointed. The appointment of a fact-finder pursuant to this subchapter shall not be reviewable by the Commission.

Amended by R.1996 d.365, effective October 21, 1996.

See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

#### **19:16-4.3 Fact-finder's function**

(a) The appointed fact-finder shall, as soon as possible after appointment, meet with the parties or their representatives, make inquiries and investigations, hold hearings, which shall not be public unless all parties agree to have them public, or take other steps deemed appropriate in order to discharge the function of the fact-finder.

(b) For the purpose of such hearings, investigations and inquiries, the fact-finder shall have the authority and power to subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum and require the production and examination of any governmental or other books or papers relating to any matter under investigation by or in issue before the fact-finder.

(c) Information disclosed by a party to a fact-finder while functioning in a mediatory capacity shall not be divulged by the fact-finder voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a fact-finder while serving in a mediatory capacity shall be classified as confidential. The fact-finder shall not produce any confidential records of, or testify in regard to, any mediation conducted by him or her, on behalf of any party in any type of proceeding under the New Jersey Employer- Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(d) If the impasse is not resolved during fact-finding, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the process as possible.

(e) Any findings of fact and recommended terms of settlement shall be limited to those issues that are within the required scope of negotiations, unless the parties have agreed to submit issues to the fact-finder which involved permissive subjects of negotiations.

(f) Any findings of fact and recommended terms of settlement shall be submitted simultaneously in writing to the parties privately and to the Director of Conciliation.

(g) The parties shall meet within five days after receipt of the fact-finder's findings of fact and recommended terms of settlement, to exchange statements of position and to have an opportunity to reach an agreement.

Amended by R.1991 d.425, effective August 19, 1991.

See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a).

Reference to the New Jersey Employer-Employee Relations Act added.

Amended by R.1996 d.240, effective May 20, 1996.  
See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).  
Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

## **SUBCHAPTER 5. COMPULSORY INTEREST ARBITRATION**

### **19:16-5.1 Scope of compulsory interest arbitration**

The provisions in this subchapter relate to notification requirements, compulsory interest arbitration proceedings and the designation of arbitrators to resolve impasses in collective negotiations involving public employers and exclusive employee representatives of public fire and police departments.

### **19:16-5.2 Initiation of compulsory interest arbitration; motion to dismiss**

(a) Compulsory interest arbitration may be initiated through appropriate utilization of any of the following:

1. In the event of a continuing impasse following receipt of a fact-finder's findings of fact and recommended terms of settlement, a petition requesting that an impasse be resolved through compulsory interest arbitration may be filed by an employee representative and/or public employer. Forms for filing such petitions will be supplied upon request. Address such requests to: Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429.
2. On or after the date on which their collective negotiations agreement expires, and notwithstanding N.J.A.C. 19:16-3.1 and 4.1, either party may file a petition with the Director of Arbitration requesting the initiation of compulsory interest arbitration.
3. On or after the expiration of a collective negotiations agreement, in the event of an impasse and notwithstanding the failure of either party to initiate impasse procedures or compulsory interest arbitration, the Commission or the Director of Arbitration may invoke compulsory interest arbitration.

(b) A non-petitioning party may, within 14 days of receiving the Director of Arbitration's notice of filing, N.J.A.C. 19:16-5.3, file a motion to dismiss the petition on the grounds that the unit is not entitled to compulsory arbitration under N.J.S.A. 34:13A-15. The motion shall be filed with the Chair, who may refer it to the Commission or a Commission designee. Absent an extension of time, the filing of a motion to dismiss shall not toll the time periods set forth in N.J.A.C. 19:16-5.5.

Amended by R.1996 d.240, effective May 20, 1996.  
See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).  
Amended by R.2001 d.215, effective July 2, 2001.  
See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

**19:16-5.3            Contents of the petition requesting the initiation of compulsory interest arbitration; proof of service; notice of filing**

(a)        An original and four copies of a petition requesting the initiation of compulsory interest arbitration shall be filed with the Director of Arbitration. This document shall be signed and dated and contain the following information:

1.        Name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;
2.        Name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the exclusive representative;
3.        A description of the collective negotiations unit and the approximate number of employees involved;
4.        A statement as to whether either party has previously requested mediation, whether a mediator has been appointed, the name of the mediator, and the dates and duration of mediation sessions, if any;
5.        A statement as to whether fact-finding with recommendations for settlement has been invoked, whether a fact-finder has been appointed, and whether a fact-finding report and recommendations have been issued, and the date of such report, if any;
6.        The termination date of the current agreement, if any;
7.        The required budget submission date of the public employer;
8.        Whether the request is a joint request;
9.        A statement indicating which issues are in dispute, identifying the issues as economic or non-economic within the meaning of N.J.S.A. 34:13A-16(f)(2); and
10.      A statement as to whether a dispute exists as to the negotiability of any of the unresolved issues.

(b)        In the absence of a joint petition, the petitioner shall file proof of service of a copy of the petition on the other party.

(c)        In the absence of a joint petition, the Director of Arbitration shall, upon receipt of the petition, send a notice of filing to the non-petitioning party advising it of the time period for responding to the petition.

Recodified from 19:16-5.4 and amended by R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Amended by R.1996 d.365, effective October 21, 1996.

See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

Amended by R.2001 d.215, effective July 2, 2001.

See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

**19:16-5.4            Notification of terminal procedure agreement**

(a) Within 17 days after the filing of a joint petition or the receipt of the notice of filing by the non-petitioning party, the parties shall notify the Director of Arbitration as to whether or not they have agreed upon a terminal procedure which provides for finality in resolving all issues in dispute pursuant to N.J.S.A. 34:13A-16.

(b) If the parties have agreed upon a terminal procedure, the procedure shall be reduced to writing and shall be submitted to the Director of Arbitration for approval. The Director of Arbitration, within 10 days of receipt of the submission of a mutually agreed upon terminal procedure, shall notify the parties as to whether such procedure has been approved.

(c) If the parties have failed to agree upon a terminal procedure, each party shall file a statement with the Director of Arbitration, within 17 days after the joint filing or receipt of the notice of filing, indicating the reasons for its inability to agree on a procedure. The failure of a party to submit such a statement or the substance of the statement shall not provide a basis for any delay in effectuating the provisions of this subchapter.

(d) At any time before the arbitrator takes testimony or evidence, the parties may submit a mutually agreed-upon modification of the terminal procedure to the Director of Arbitration for approval. At any time after the arbitrator takes testimony or evidence, but before the close of the hearing, the parties may submit an agreed-upon modification of the terminal procedure to the assigned arbitrator for approval.

New Rule, R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Former N.J.A.C. 19:16-5.4 "Contents of the notification or petition requesting the initiation of compulsory interest arbitration", recodified to 19:16-5.3.

Amended by R.2001 d.215, effective July 2, 2001.

See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

#### **19:16-5.5 Response to the petition requesting the initiation of compulsory interest arbitration**

(a) In the absence of a joint petition requesting the initiation of compulsory interest arbitration, the non-petitioning party shall file within 14 days of receipt of a notice of filing, a statement of response setting forth the following:

1. Any additional unresolved issues to be submitted to arbitration;
2. A statement as to whether it disputes the identification of any of the issues as economic or non-economic;
3. A statement as to whether it refuses to submit any of the issues listed on the notification or petition to arbitration on the ground that such issue is not within the required scope of negotiations; and
4. Any other relevant information with respect to the nature of the impasse.

(b) Proof of service on the petitioner of the respondent's statement shall be supplied to the Director of Arbitration. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the request for the initiation of compulsory interest arbitration as submitted by the filing party. The substance of this response shall not provide the basis for any delay in effectuating the provisions of this chapter.

(c) Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission a petition for scope of negotiations determination pursuant to N.J.A.C. 19:13. This petition must be filed within 14 days of receipt of the notice of filing of the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

(d) Where a dispute exists regarding the identification of an issue as economic or non-economic, the party contesting the identification of the issue shall file with the Commission a petition for issue definition determination. This petition must be filed within 14 days of receipt of the notice of filing of the petition requesting the initiation of compulsory interest arbitration or within five days after receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for issue definition determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

Amended by R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Rewrote (a).

Amended by R.1996 d.365, effective October 21, 1996.

See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

Amended by R.2001 d.215, effective July 2, 2001.

See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

#### **19:16-5.6 Appointment of an arbitrator or panel of arbitrators**

(a) The Commission shall maintain a special panel of interest arbitrators. Members of this panel shall be appointed for three-year terms following a screening process as set forth in N.J.S.A. 34:13A-16(e) and pursuant to the standards set forth in N.J.A.C. 19:16-5.15. Reappointments to the panel shall also be contingent upon a similar screening process. The arbitrators appointed pursuant to this subchapter shall be from this special panel. All arbitrators appointed by the Commission shall be considered officers of the Commission while performing duties pursuant to this subchapter. The Commission may suspend, remove, or otherwise discipline an arbitrator for violating the Police and Fire Public Interest Arbitration Reform Act or for good cause in accordance with the procedures set forth at N.J.A.C. 19:16-5.16. Any arbitrator who fails to attend the Commission's annual continuing education program under section 4 of the Police and Fire Public Interest Arbitration Reform Act may be removed from the special panel. Any arbitrator who fails to participate in the continuing education program for two consecutive years shall be removed.

(b) Within 17 days of the filing of a joint petition, or a non-petitioning party's receipt of a notice of filing, the parties shall notify the Director of Arbitration in writing of any mutual agreement to select an arbitrator from the special panel of arbitrators. The parties may also jointly request the appointment of a particular arbitrator who is not a member of the Commission's special panel, and the Director of Arbitration may approve the appointment of that arbitrator to the special panel for that particular arbitration.

(c) In the event that the parties have agreed to a tripartite panel of arbitrators, each party shall communicate in writing to the Director of Arbitration indicating the name, address and telephone number of the arbitration representative designed to the panel. In all such circumstances, the arbitrator appointed by the Director of Arbitration from the Commission's special panel of interest arbitrators shall serve as chairman of the arbitration panel. The arbitration representatives designated by each of the parties need not be members of the Commission's special panel, and shall not be considered officers of the Commission.

(d) Unless an arbitrator has been mutually selected by the parties, the Director of Arbitration shall select the arbitrator by lot. Once such selection has been made by the Director, the parties may not mutually select a different arbitrator.

(e) If an arbitrator selected by mutual agreement is unable to serve and the parties are unable to mutually agree on a replacement arbitrator within 10 days of the date the arbitrator became unable to serve, the Director of Arbitration shall select the replacement by lot.

(f) If an arbitrator assigned by lot is unable to serve and the parties are unable to agree on a replacement arbitrator within 10 days of the date the arbitrator became unable to serve, the Director of Arbitration shall select the replacement arbitrator by lot.

(g) Any motion to disqualify an interest arbitrator shall be filed with the Commission, together with proof of service of a copy on the other party and the arbitrator. Any response to such motion shall be filed with the Commission within five days of service of the motion, together with proof of service of a copy on the other party and the arbitrator. The Chairman or some other Commission designee shall then either decide the motion or refer it to the arbitrator or the full Commission.

Amended by R.1996 d.240, effective May 20, 1996.

See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

Rewrote section.

Amended by R.1996 d.326, effective July 15, 1996.

See: 28 N.J.R. 2346(a), 28 N.J.R. 3618(a).

Amended by R.1997 d.152, effective April 7, 1997.

See: 29 N.J.R. 105(a), 29 N.J.R. 1399(a).

In (a), inserted references to N.J.A.C. 19:16-5.15 and 19:16-5.16.

Amended by R.2001 d.215, effective July 2, 2001.

See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

#### **19:16-5.7 Conduct of the arbitration proceeding**

(a) The conduct of the arbitration proceeding by an arbitrator or panel of arbitrators shall be under the exclusive jurisdiction and control of the arbitrator or arbitrators.

(b) The appointed arbitrator or panel of arbitrators may mediate or assist the parties in reaching a mutually agreeable settlement at any time throughout formal arbitration proceedings.

(c) Information disclosed by a party to an arbitrator while functioning in a mediatory capacity shall not be divulged by the arbitrator voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by an arbitrator while serving in a mediatory capacity shall be classified as confidential. The arbitrator shall not produce any confidential records of, or testify in regard to, any mediation conducted by the arbitrator, on behalf of any party in any type of proceeding under the New Jersey Employer- Employee Relations Act, as amended, including, but not limited to, unfair practice proceedings under N.J.A.C. 19:14.

(d) The arbitrator may administer oaths, conduct hearings, and require the

attendance of such witnesses and the production of such books, papers, contracts, agreements, and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas and shall entertain any motions to quash such subpoenas. Any hearings conducted shall not be public unless all parties agree to have them public.

(e) Unless a terminal procedure has been mutually agreed to by the parties and approved by the Director of Arbitration, the procedure to provide finality for the resolution of unsettled issues shall be conventional arbitration. The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in N.J.S.A. 34:13A-16g.

(f) The arbitrator, after appointment, shall communicate with the parties to arrange for a mutually satisfactory date, time and place for a hearing. In the absence of an agreement, the arbitrator shall have the authority to set the date, time and place for a hearing. The arbitrator shall submit a written notice containing arrangements for a hearing within a reasonable time period before hearing. At least 10 days before the hearing, the parties shall submit to the arbitrator or tripartite panel of arbitrators and to each other their final offers on each economic and non-economic issue in dispute. The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approves such an agreement, before the close of the hearing. Upon taking testimony or evidence, the arbitrator shall notify the parties that their offers shall be deemed final, binding and irreversible unless the arbitrator approves an agreement between the parties to permit revisions before the close of the hearing.

(g) The arbitrator's authority shall be limited to those issues which are within the required scope of negotiations, unless the parties have mutually agreed to submit issues to the arbitrator which involve permissive subjects of negotiation.

(h) The arbitrator shall be permitted to take evidence, but shall not render a decision on any issue which is the subject of a petition for a scope of negotiations determination filed with the Commission or on any issue which is the subject of an issue definition proceeding pursuant to N.J.A.C. 19:16-6.

(i) The arbitrator shall have the authority to grant adjournments for good cause shown upon either party's application or the arbitrator's own motion.

(j) The arbitrator, after duly scheduling the hearing, shall have the authority to proceed in the absence of any party who, having failed to obtain an adjournment, does not appear at the hearing. Such party shall be deemed to have waived its opportunity to provide argument and evidence.

(k) The parties, at the discretion of the arbitrator, may file post-hearing briefs. The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs, but that period shall not exceed 30 days from the close of the hearing. Briefs shall be submitted to the arbitrator along with submission of proof of service on all parties. The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.



Amended by R.1986, d.355, effective September 8, 1986.  
See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a).  
See: 21 N.J.R. 3567(a), 21 N.J.R. 3677(a), 22 N.J.R. 260(a).  
Amended by R.1990 d.221, effective May 7, 1990.  
See: 22 N.J.R. 330(a), 22 N.J.R. 1380(a).  
Amended by R.1991 d.425, effective August 19, 1991.  
See: 23 N.J.R. 1296(b), 23 N.J.R. 2525(a).  
Amended by R.1996 d.240, effective May 20, 1996.  
See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).  
Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).  
Amended by R.2001 d.215, effective July 2, 2001.  
See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

#### **19:16-5.8            Stenographic record**

A stenographic record shall not be a procedural requirement for the conduct of a hearing. However, any party shall have the right to a stenographic record taken of the arbitration proceeding. The arrangements for a stenographic record must be made by the requesting party after the appointment of the arbitrator. The cost of such record shall be paid by the party requesting it or divided equally between the parties if both make such a request. If a stenographic record is requested by either or both parties, the party or parties making the request shall provide at its/their cost a copy of a transcript to the arbitrator.

Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

#### **19:16-5.9            Opinion and award**

If the impasse is not otherwise resolved, the arbitrator or arbitrators shall decide the dispute and issue a written opinion and award within 120 days of the Director of Arbitration's assignment of that arbitrator. The arbitrator or panel of arbitrators, for good cause, may petition the Director of Arbitration for an extension of not more than 60 days. The arbitrator shall notify the parties in writing of such a petition and the Director shall notify the parties and the arbitrator in writing of whether the petition has been granted or denied. The two parties, by mutual consent, may agree to an extension. The parties shall notify the arbitrator and the Director of any such agreement in writing. The notice shall set forth the specific date on which the extension shall expire. Any arbitrator or panel of arbitrators violating the provisions of this section may be subject to suspension, removal or discipline under N.J.A.C. 19:16-5.6. The opinion and award shall be signed and based on a reasonable determination of the issues, giving due weight to those factors listed in N.J.S.A. 34:13A-16(g) which are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The opinion and award shall set forth the reasons for the result reached. Copies of the opinion and award shall be submitted directly to the Director of Arbitration who will then serve the parties simultaneously.

Amended by R.1986 d.355, effective September 8, 1986.  
See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a).  
Deleted "as expeditiously as possible after the closing of hearing" and substituted "within 45 days after the filing of briefs"; also deleted served simultaneously on the parties of the commission" and substituted "submitted directly to ... the parties simultaneously."  
Amended by R.1996 d.240, effective May 20, 1996.  
See: 28 N.J.R. 1493(a), 28 N.J.R. 2567(a).

#### **19:16-5.10           Code of Professional Responsibility for Arbitrators of Labor- Management Disputes**

The arbitrator shall be guided by the objectives and principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

Amended by R.1996 d.365, effective October 21, 1996.  
See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

**19:16-5.11 Cost of arbitration**

(a) The costs of services performed by the arbitrator shall be borne equally by the parties in accordance with the following fee schedule:

1. For arbitrators assigned by lot, pursuant to N.J.S.A. 34:13A-16e(1), the fee shall be \$800.00 per day;

2. For arbitrators mutually selected by the parties, the fee shall be a per diem rate, not to exceed \$1,000 per day, set by the arbitrator and filed with the Director of Arbitration.

(b) Should the parties use an arbitration panel with an appointee of each of the parties, as permitted by N.J.A.C. 19:16-5.6(c), each appointee's fee shall be paid by the party making the appointment. The costs of the services of the special panel member who chairs the panel shall be borne equally by the parties. The fee for the chair of the panel shall be as set forth in (a)1 or 2 above, depending on whether the arbitrator is assigned by lot or mutually selected by the parties.

Amended by R.1998 d.156, effective April 6, 1998.  
See: 30 N.J.R. 29(a), 30 N.J.R. 1303(a).

**19:16-5.12 Fees for filing and processing interest arbitration petitions**

At the time a joint petition to initiate interest arbitration is filed pursuant to N.J.A.C. 19:16-5.2, each party shall pay a \$150.00 fee. If the petition is filed by one party only, then the petitioning party shall pay a \$150.00 fee upon filing the petition and the non-petitioning party shall pay a \$150.00 fee upon filing its response to the petition pursuant to N.J.A.C. 19:16-5.5. Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

New Rule, R.1996 d.275, effective June 17, 1996.  
See: 28 N.J.R. 1610(a), 28 N.J.R. 3174(a).

**19:16-5.13 Fees for appealing and cross-appealing interest arbitration awards and requests for special permission to appeal interlocutory rulings or orders**

At the time a party files a notice of appeal of an interest arbitration award with the Commission, the appealing party shall pay a \$135.00 fee. At the time a party files a notice of cross-appeal of an interest arbitration award with the Commission, the cross-appealing party shall pay a \$135.00 fee. At the time a party files with the Commission a request for special permission to appeal an interlocutory order or ruling, the party shall pay a \$25.00 fee. Fees shall be paid by checks made payable to the "State of New Jersey"; purchase orders may be submitted.

New Rule, R.1996 d.275, effective June 17, 1996.  
See: 28 N.J.R. 1610(a), 28 N.J.R. 3174(a).  
Amended by R.1997 d.221, effective May 19, 1997.

See: 29 N.J.R. 857(a), 29 N.J.R. 2467(c).

#### **19:16-5.14 Comparability guidelines**

(a) N.J.S.A. 34:13A-16g identifies eight factors that an interest arbitrator must consider in reviewing the parties' proposals. The arbitrator must indicate which of the factors listed in that subsection are deemed relevant; satisfactorily explain why the others are not relevant; and provide an analysis of the evidence on each relevant factor. N.J.S.A. 34:13A-16g(2)(c) lists as a factor "public employment in the same or similar comparable jurisdictions...." Subsection a of section 5 of P.L. 1995, c.425 requires that the Commission promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2)(c) of subsection g.

(b) The guidelines set forth in (c) and (d) below are intended to assist the parties and the arbitrator in focusing on the types of evidence that may support comparability arguments. The guidelines are intended to be instructive but not exhaustive. The arbitrator shall consider any and all evidence submitted pursuant to the comparability guidelines and shall apply these guidelines in addressing the comparability criterion.

1. The Public Employment Relations Commission recognizes that the extent to which a party to an arbitration proceeding asserts that comparisons to public employment in the same or similar comparable jurisdictions are relevant to that proceeding is a matter to be determined by that party. The Commission also recognizes that it is the responsibility of each party to submit evidence and argument with respect to the weight to be accorded any such evidence.

2. The Commission further recognizes that it is the arbitrator's responsibility to consider all the evidence submitted and to determine the weight of any evidence submitted based upon the guidelines in (c) and (d) below and to determine the relevance or lack of relevance of comparability in relationship to all eight factors set forth in N.J.S.A. 34:13A-16g. Promulgation of these guidelines is not intended to require that any party submit evidence on all or any of the elements set forth in (c) and (d) below or assert that the comparability factor should or should not be deemed relevant or accorded any particular weight in any arbitration proceeding. Nothing in this section shall preclude the arbitrator from supplementing the factual record by issuing subpoenas to require the attendance of witnesses and the production of documents. Nor does anything in this section prevent the arbitrator from requesting the parties to supplement their presentations in connection with this factor or any other factor set forth in the law.

(c) The following are comparability considerations within the same jurisdiction:

1. Wages, salaries, hours and conditions of employment of law enforcement officers and firefighters;

2. Wages, salaries, hours and conditions of employment of non-uniformed employees in negotiations units;

3. Wages, salaries, hours and conditions of employment of employees not in negotiations units;

4. History of negotiations:

i. Relationships concerning wages, salaries, hours and conditions of employment of employees in police and fire units; and

ii. History of differentials between uniformed and non-uniformed employees;

5. Pattern of salary and benefit changes; and
6. Any other considerations deemed relevant by the arbitrator.

(d) The following are comparability considerations for similar comparable jurisdictions:

1. Geographic:
  - i. Neighboring or overlapping jurisdictions;
  - ii. Nearby jurisdictions;
  - iii. Size; and
  - iv. Nature of employing entity.
2. Socio-economic considerations:
  - i. Size, density, and characteristics of population;
  - ii. Per capita income;
  - iii. Average household income;
  - iv. Average property values;
  - v. Gain or loss of assessed value;
  - vi. Ratable increases/decreases from year to year;
  - vii. Tax increases/decreases over last few years;
  - viii. Cost-of-living (locally);
  - ix. Size and composition of police force or fire department;
  - x. Nature of services provided;
  - xi. Crime rate;
  - xii. Violent crime rate;
  - xiii. Fire incident rate; and
  - xiv. Fire crime rate.
3. Financial considerations:
  - i. Revenue:
    - (1) Taxes:
      - (A) School;

- (B) County;
- (C) Municipal;
- (D) Special district;
- (E) State equalization valuation and ratio; and
- (F) Other taxes;

- (2) Tax base/ratables;
- (3) Equalized tax rate;
- (4) Tax collections;
- (5) Payments in lieu of taxes;
- (6) Delinquent tax and lien collections;
- (7) State aid revenues;
- (8) Federal aid revenues;
- (9) Sale of acquired property;
- (10) Budget surplus;
- (11) Other miscellaneous revenues;
- (12) Prior years surplus appropriated;
- (13) Total revenues;
- (14) Reserve for uncollected taxes;
- (15) Taxes as percentage of total municipal revenues;
- (16) All other municipal revenues;
- (17) Any other sources of revenue;
- (18) Total municipal revenues; and
- (19) Budget cap considerations;

ii. Expenditures:

- (1) Police protection;
- (2) Fire protection;
- (3) Total municipal functions;
- (4) Police protection as percentage of total municipal

functions;

(5) Fire protection as percentage of total municipal functions; and

(6) Percentage of net debt/bond rating;

iii. Trends in revenues and expenditures;

4. Compensation and other conditions of employment:

i. Relative rank within jurisdictions asserted to be comparable;

ii. Wage and salary settlements of uniformed employees;

iii. Wage and salary settlements of non-uniformed employees in negotiations units;

iv. Wage and salary settlements of employees not in negotiations units;

v. Top step salaries;

vi. Overall compensation:

(1) Wage and salaries;

(2) Longevity;

(3) Holidays;

(4) Vacations;

(5) Uniform allowance;

(6) Medical and hospitalization benefits;

(7) Overtime;

(8) Leaves of absence;

(9) Pensions; and

(10) Other retiree benefits;

vii. Work schedules;

viii. Work hours;

ix. Workload:

(1) Number of calls or runs per officer; and

(2) Other relevant standards for measuring

workload; and

x. Other conditions of employment; and

5. Any other comparability considerations deemed relevant by the arbitrator.

New Rule, R.1996 d.327, effective July 15, 1996.  
See: 28 N.J.R. 2347(a), 28 N.J.R. 3618(b).

**19:16-5.15 Standards for appointment and reappointment to the special panel**

(a) Because any special panel member may be assigned by lot to the most demanding and complex interest arbitration matter, appointments to the special panel will be limited to those labor relations neutrals who, in the Commission's expert judgment, have the demonstrated ability to mediate the most complex labor relations disputes and resolve the most demanding interest arbitration matters in the most professional, competent and neutral manner. No applicant shall have any right or expectation to be appointed or reappointed to the special panel.

(b) An applicant shall already be a member of the Commission's mediation, fact-finding and grievance arbitration panels, have an impeccable reputation in the labor-management community for professional competence, ethics and integrity, shall have complied with all applicable codes of conduct, and shall demonstrate:

1. Ability to write a well-reasoned decision consistent with applicable legal standards and within statutory deadlines;

2. Knowledge of labor relations, governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings;

3. Substantial experience both as a mediator and arbitrator; and

4. Competent performance on the Commission's mediation, fact-finding and grievance arbitration panels.

(c) An applicant's qualifications shall be determined by an overall assessment of the following considerations, with special emphasis to be given to considerations (c)1 through 3 below. An applicant shall, at a minimum, satisfy either considerations (c)1 and 2 below, or (c)2 and 3 below.

1. Demonstrated experience as an interest arbitrator and demonstrated ability to write well-reasoned interest arbitration decisions consistent with applicable legal standards and within statutory deadlines. Experience and writing ability shall be evaluated by a review of the cases where the applicant served as an interest arbitrator and a review of the quality of the arbitrator's work product.

i. To satisfy this consideration, an applicant shall have had at least 15 interest arbitration appointments in the last five years and shall have performed assignments in a superior manner. An applicant shall also submit at least five interest arbitration awards written by the applicant, which awards shall have been well-reasoned, legally sound, and promptly issued. Special emphasis shall be given to New Jersey public sector appointments and awards.

2. Demonstrated experience and acceptability as a public or private sector mediator and/or fact-finder. An applicant shall exhibit the ability to serve in

complex and difficult public sector negotiations disputes and shall be evaluated by a review of his or her cases as a mediator and/or fact-finder and the quality of the applicant's performance in those cases.

i. To satisfy this consideration, an applicant shall have the equivalent of three years of mediation and/or fact-finding experience and shall have performed assignments in a superior manner. Special emphasis will be given to New Jersey public sector assignments.

3. Demonstrated experience as a public or private sector grievance arbitrator involving the ability to decide complex and difficult labor relations issues in a fair and objective manner. Experience shall be evaluated by a review of the cases where an applicant served as a grievance arbitrator and the quality of the applicant's work product in those cases.

i. To satisfy this consideration, an applicant shall have the equivalent of three years of grievance arbitration experience. An applicant shall submit at least 10 awards written by the applicant, which awards shall have been well-reasoned, legally sound, and promptly issued. Special emphasis shall be given to New Jersey public sector awards.

4. Membership and offices in the National Academy of Arbitrators or other relevant professional organizations and panel memberships in any labor dispute settlement agency.

i. This consideration simply augments the considerations in (c)1 through 3 above.

5. Formal educational attainments, teaching positions, and professional publications demonstrating knowledge of labor relations, governmental and fiscal principles relevant to dispute settlement and interest arbitration proceedings.

i. This consideration simply augments the considerations in (c)1 through 3 above.

6. Other labor relations, arbitration, governmental or fiscal experience.

i. This consideration simply augments the considerations in (c)1 through 3 above.

(d) Every applicant shall complete an application form prepared by the Director of Conciliation and Arbitration. That form is designed to solicit information concerning the foregoing requirements and considerations. The form also allows an applicant the opportunity to submit any other information he or she deems relevant. The Director shall review all applications and make a recommendation to the Commission regarding each one within 60 days. The Commission shall notify an applicant in writing of any action taken upon an application.

(e) In addition to the requirements and considerations listed in (c) above, an applicant seeking reappointment shall have demonstrated successful service during the terms of his or her previous appointments to the special panel, as measured by:

1. The issuance of well-reasoned, legally sound, and timely awards;

2. Compliance with statutory standards and deadlines;



case law requirements; agency regulations, rules, policies, administrative memoranda, and reporting procedures; and

3. Any other applicable requirements.

(f) An applicant for reappointment shall also have abided by the Code of Professional Responsibility for Interest Arbitrators adopted by the New Jersey Public Employment Relations Commission; the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes adopted by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service; and the Code of Professional Conduct for Labor Mediators adopted by the Association of Labor Relations Agencies and the Federal Mediation and Conciliation Service. An applicant for reappointment shall also have attended the Commission's continuing education programs, as directed, per N.J.S.A. 34:13A-16.1.

(g) Satisfying one or more of the considerations listed in (c) above does not necessarily qualify an applicant for appointment or reappointment to the special panel. An appointment or reappointment depends upon the Commission's overall expert assessment of an applicant's ability to handle the most complex and demanding interest arbitration assignments.

(h) No applicant shall be appointed to the panel who, in the three years prior to the application date, has:

1. Served as an advocate for labor or management in the public or private sector;
2. Been elected or appointed to a political office or a governing body; or
3. Has served in a partisan political capacity.

New Rule, R.1997 d.152, effective April 7, 1997.  
See: 29 N.J.R. 105(a), 29 N.J.R. 1399(a).

**19:16-5.16      Suspension, removal or discipline of members of the special panel**

(a) Pursuant to N.J.S.A. 34:13A-16(e), this section provides a procedure to be followed by the Commission in deciding whether to suspend, remove, or otherwise discipline an arbitrator during his or her three-year term.

(b) If it appears that suspension, removal, or discipline may be warranted, the Director of Conciliation and Arbitration shall provide a written statement to the arbitrator specifying the reasons for the action being considered. The arbitrator shall have an opportunity to submit a prompt written response to the Director. The arbitrator shall also be given an opportunity to meet with the Director to discuss the matter.

(c) If a suspension or removal is being contemplated, if the arbitrator requests a hearing, and if it appears to the Director that substantial and material facts are in dispute, the Director may designate a hearing officer to conduct a hearing and make findings of fact.

(d) The Director may temporarily suspend an arbitrator from the panel pending any hearing.

(e) After receiving the arbitrator's response, meeting with the arbitrator, and considering the facts found at any hearing, the Director may decide to reprimand, suspend, or remove an arbitrator or may decide that no action is warranted. The Director shall send a written decision to the arbitrator.

(f) Within 14 days of receiving the Director's decision, an arbitrator may file a written appeal of that decision with the Commission. Such appeal shall specify the grounds for disagreeing with the Director's decision.

(g) A temporary suspension may be continued pending that appeal.

(h) The Commission or its designee may sustain, modify, or reverse the action taken by the Director and shall provide the arbitrator with a written statement explaining the basis for that decision.

New Rule, R.1997 d.152, effective April 7, 1997.  
See: 29 N.J.R. 105(a), 29 N.J.R. 1399(a).

**19:16-5.17      Interlocutory rulings; appeal on special permission**

(a) Interlocutory rulings or orders issued before the arbitrator's final written opinion and award under N.J.S.A. 34:13A-16(f)(5) and N.J.A.C. 19:16-5.9 shall not be appealed to the Commission except by special permission to appeal. All such rulings and orders shall become part of the record of the arbitration proceedings and shall be reviewed by the Commission in considering any appeal or cross-appeal from an arbitrator's final award, provided exception to the ruling or order is included in the notice of appeal or cross-appeal filed with the Commission pursuant to N.J.A.C. 19:16-8.1 through 8.3.

(b) A request for special permission to appeal shall be filed in writing within five days from the service of written rulings or statements of oral rulings, and shall briefly state the grounds for granting special permission to appeal and the grounds for reversing or modifying the ruling or order in question. An original and nine copies of the request shall be filed with the Chair, together with the \$25.00 fee required under N.J.A.C. 19:16-5.13 and proof of service of a copy of the request on all other parties and the arbitrator assigned to the case. A party opposing the request may file an original and nine copies of a statement in opposition within five

days of service on it of the request for special permission to appeal and shall briefly state the grounds for denying special permission to appeal and the grounds for affirming the ruling or order in question. An original and nine copies of the statement shall be filed with the Chair, together with proof of service of a copy on all other parties and the arbitrator assigned to the case.

(c) The Chair has the authority to grant or deny special permission to appeal. If the Chair grants special permission to appeal, the arbitration proceeding shall not be stayed unless otherwise ordered by the Chair. The Commission shall consider an appeal on the papers submitted to the Chair, or on such further submission as it may require.

New Rule, R.1997 d.221, effective May 19, 1997.  
See: 29 N.J.R. 857(a), 29 N.J.R. 2467(c).

## **SUBCHAPTER 6. DETERMINATION OF DISPUTES OVER ISSUE DEFINITION**

### **19:16-6.1 Purpose of procedure**

The purpose of this subchapter is to provide an expeditious procedure for the resolution of disputes as to whether an issue is an economic or a non-economic issue as defined in N.J.S.A. 34:13A-16(f)(2).

### **19:16-6.2 Procedure**

(a) Whenever there is a dispute between the parties as to whether an issue is an economic or a non-economic issue, either party or the parties jointly may file with the Commission a petition for issue definition determination. A blank form for filing a request for issue definition will be supplied upon request. Address requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

(b) An original and four copies of such a petition together with proof of service upon the other party shall be filed with the Commission and shall be signed and dated and shall contain the following information:

1. The name and address of the public employer that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the public employer;

2. The name and address of the exclusive representative that is a party to the collective negotiations; the name, address, telephone number, and title of its representative to be contacted; and the name, address and telephone number of any attorney/consultant representing the exclusive representative;

3. A description of the collective negotiations unit, including the approximate number of employees in the unit;

4. A listing of the item or items on which there is a dispute as to the definition of the issue or issues as economic or non-economic issues.

5. A brief or statement in lieu of brief indicating the arguments relied upon to support the definition of the disputed issue or issues favored by the party filing the petition.

6. A list of any other actions before the Commission or any other administrative agency, arbitrator or court which the petitioner(s) knows about and which involve

the same or similar issues;

7. Whether the request is a joint request.

(c) The party opposing the definition of the disputed issue or issues set forth in the petition may submit to the Commission within 10 days of receipt of the petition its position with respect to each disputed issue or issues, together with a brief or statement in lieu of brief to support its position. Failure to submit such a response shall be deemed to indicate acceptance of the issue definition advanced by the petitioner. A copy of the response must be served on the petitioner and proof of such service must be filed with the Commission.

(d) The parties may jointly submit a petition for issue definition determination along with their briefs or statements in lieu of briefs.

(e) To expedite the resolution of a petition for issue definition determination, determinations pursuant to this proceeding normally will be made on the basis of written submissions without a hearing. However, a hearing may be requested by one or both of the parties or the Chairman or such other Commission designee. A request for a hearing shall be made in writing and shall be submitted no later than five days after receipt of the position of the party opposing the definition of the disputed issue or issues set forth in the petition. Failure to submit such a request shall be deemed to constitute a waiver of the right to a hearing. A request for a hearing shall not be used for the purposes of delay.

(f) Based upon the parties' submissions, the Chairman or other such Commission designee shall render a written determination which classifies the disputed issue or issues as economic or non-economic issues as defined in N.J.S.A. 34:13A-16(f)2.

(g) Determination pursuant to this subchapter shall not be reviewable in any proceeding before this Commission.

Amended by R.1986 d.355, effective September 8, 1986.

See: 18 N.J.R. 1358(a), 18 N.J.R. 1839(a).

Amended by R.1996 d.365, effective October 21, 1996.

See: 28 N.J.R. 2801(a), 28 N.J.R. 4598(a).

## **SUBCHAPTER 7. FAILURE TO SUBMIT A NOTICE OR OTHER DOCUMENT**

### **19:16-7.1 Failure to submit a notice or other document**

The failure to submit any notification, petition, statement or other document as set forth in these rules shall not provide the basis for any delay in these proceedings, nor shall it otherwise prevent or preclude the resolution of a dispute through compulsory interest arbitration pursuant to this chapter.

## **SUBCHAPTER 8. APPEALS**

### **19:16-8.1 Appeals and cross-appeals**

(a) Within 14 days after receiving an award forwarded by the Director of Arbitration, an aggrieved party may file an original and nine copies of a notice of appeal to the Commission, together with the \$135.00 fee required under N.J.A.C. 19:16-5.13.

1. The notice shall specify each alleged failure of the arbitrator to apply the criteria specified in N.J.S.A. 34:13A-16g and each alleged violation of the standards set forth in N.J.S.A. 2A:24-8 or 2A:24-9.

2. If a stenographic record of the hearing was prepared, the appellant shall provide a copy of the transcript to the Commission.

3. Filings shall be accompanied by proof of service of a copy on the other party.

4. The appellant shall also file a copy of the notice on the arbitrator.

5. Within 14 days after filing a notice of appeal, the appellant shall file an original and nine copies of a brief in support of the appeal, together with proof of service of a copy on the other party. The appellant shall simultaneously file an original and nine copies of an appendix containing those parts of the record the appellant considers necessary to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied upon by the respondent in meeting the issues raised.

(b) Within seven days after the service of an appeal, the respondent may file a notice of cross-appeal to the Commission, together with the \$135.00 fee required under N.J.A.C. 19:16-5.13.

1. The notice shall specify each alleged failure of the arbitrator to apply the criteria specified in N.J.S.A. 34:13A-16g and each alleged violation of the standards set forth in N.J.S.A. 2A:24-8 or 2A:24-9.

2. Filings shall be accompanied by proof of service of a copy on the other party.

3. The cross-appellant shall also file a copy of the notice of cross-appeal on the arbitrator.

4. Within 14 days after filing a notice of cross-appeal, the cross-appellant shall file an original and nine copies of a brief in support of the cross-appeal and in response to the appeal, together with proof of service of a copy on the other party. The respondent/cross-appellant may also file an original and nine copies of an appendix containing those parts of the record not included in the appellant's appendix that the respondent/cross-appellant considers necessary to the proper consideration of the issues.

(c) Where no cross-appeal is being filed, within seven days after the service of a brief in support of the appeal, the respondent shall file an original and nine copies of an answering brief limited to the issues raised in the appeal and the brief in support of the appeal. The respondent may also file an original and nine copies of an appendix containing those parts of the record not included in the appellant's appendix that the respondent considers necessary to the proper consideration of the issues. Filings shall be accompanied by proof of service of a copy on the other party.

(d) Where a cross-appeal has been filed, within seven days after the service of the brief in support of the cross-appeal, the appellant/cross-respondent may file an original and nine copies of an answering brief limited to the issues raised in the cross-appeal and the brief in support of the cross-appeal. The appellant/cross-respondent may also file an appendix containing those parts of the record not included in any earlier appendix that the appellant/cross-respondent considers necessary to the proper consideration of the issues raised in the cross-appeal. Filing shall be accompanied by the proof of service of a copy on the other party.

(e) No further briefs shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on the other party.

Amended by R.2001 d.215, effective July 2, 2001.  
See: 33 N.J.R. 1170(a), 33 N.J.R. 2282(a).

#### **19:16-8.2 Oral argument**

Any request for oral argument before the Commission shall be in writing on a separate piece of paper and shall be filed simultaneously with the appeal or cross-appeal, together with proof of service of a copy on the other party. The Commission shall notify the parties if the request for oral argument is granted and of the time and place of any oral argument.

#### **19:16-8.3 Action by the Commission**

The Commission may affirm, modify, correct or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator for reconsideration. If the parties are unable to agree upon a replacement arbitrator within 10 days of the remand order, the arbitrator shall be selected by lot.

## **CHAPTER 18**

### **CONTESTED TRANSFER DETERMINATIONS**

#### **Authority**

N.J.S.A. 34:13A-11, 34:13A-27

#### **Source and Effective Date**

R.2000 d.221, effective April 28, 2000.  
See: 31 N.J.R. 3939(a), 32 N.J.R. 2110(c).

#### **Executive Order No. 66(1978) Expiration Date**

Chapter 18, Contested Transfer Determinations, expires April 28, 2005.

#### **Chapter Historical Note**

Pursuant to Executive Order No. 66(1978), Chapter 18, Contested Transfer Determinations, expired on May 21, 1995.

Chapter 18, Contested Transfer Determinations, was adopted as new rules by R.1995 d.316, effective June 19, 1995. See: 27 N.J.R. 847(a), 27 N.J.R. 2454(a).

Pursuant to Executive Order No. 66(1978), Chapter 18, Contested Transfer Determinations, were readopted as R.2000 d.221, effective April 28, 2000. See: Source and Effective Date.

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## **SUBCHAPTER 1. NATURE OF PROCEEDINGS**

### **19:18-1.1 Nature of proceedings**

N.J.S.A. 34:13A-22 et seq. (P.L. 1989, c.269, effective January 4, 1990) provides that no employer, as defined in N.J.S.A. 34:13A-22, shall transfer an employee between worksites for disciplinary reasons. It further provides that the Commission shall determine whether the basis for a transfer between worksites is predominately disciplinary. The procedures in this chapter are intended to avoid protracted administrative litigation. Contested transfer proceedings will normally lend themselves to expeditious disposition on the basis of the parties' submissions, which these procedures are intended to accommodate.

## **SUBCHAPTER 2. INITIATION OF PROCEEDINGS**

### **19:18-2.1 Who may file**

Any employee, as defined in N.J.S.A. 34:13A-22, or the employee's majority representative may initiate a contested transfer proceeding by filing with the Commission, an original and nine copies of a petition for contested transfer determination together with proof of service of a copy of the petition on the employer. A copy of each petition filed shall be retained in a public docket until the case is closed.

### **19:18-2.2 Contents of petition for contested transfer determination**

(a) A petition<sup>1</sup> shall be in writing and the party or representative filing the petition shall make this dated and signed certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief."

(b) Such petition shall contain the following:

1. The full name, address and telephone number of the petitioner;



2. The full name, address and telephone number of the affected employee if the petitioner is an employee organization;
3. The full name, address and telephone number of the employer who has notified the employee of a transfer;
4. The date the employee was notified of the transfer;
5. A statement of the specific factual allegations supporting the contention that the basis for the transfer between worksites is predominately disciplinary;
6. All documents and affidavits supporting the petition's factual allegations; and
7. A list of any other actions before the Commission or any other administrative agency, arbitrator or court, which the petitioner knows about and which involve the same or similar issues.

Amended by R.1995 d.316, effective June 19, 1995.

See: 27 N.J.R. 847(a), 27 N.J.R. 2454(a).

<sup>1/</sup> Petition forms will be supplied upon request. Address such requests to: Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, New Jersey 08625-0429.

### **19:18-2.3 Timeliness of petitions**

The petitioner shall file a petition no later than the 90th day from the date of receipt of a notice of transfer.

New Rule, R.1995 d.316, effective June 19, 1995.

See: 27 N.J.R. 847(a), 27 N.J.R. 2454(a).

## **SUBCHAPTER 3. PROCEDURE**

### **19:18-3.1 Intervention**

A motion for leave to intervene in proceedings under this chapter shall be filed in writing with the Commission, stating the grounds upon which an interest in the proceeding is claimed and stating the extent to which intervention is sought. An original and nine copies of such motion shall be filed, together with proof of service of a copy of such motion upon the parties. The Chairman or such other Commission designee, in his or her discretion, may permit intervention to such extent and upon such terms as may be deemed just.

### **19:18-3.2 Informal conference**

A Commission staff agent may hold a conference to clarify the issues in dispute, explore the possibility of settlement, or take stipulations of fact.

### **19:18-3.3 Amendment; withdrawal; dismissal; consolidation**

(a) The Chairman or such other Commission designee may permit the petitioner to amend the petition at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended petition shall conform to the provisions of these rules relating to the original petition for contested transfer determination.

(b) A petition for contested transfer determination shall be dismissed and the case closed if the petitioner files a notice of withdrawal at any time before service of the respondent's answer. After service of the answer, a petition may be withdrawn only with the consent of the Chairman or such other Commission designee. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) The Chairman or such other Commission designee, in his or her discretion, may dismiss the petition on the grounds of lack of jurisdiction, insufficient cause for determination, failure to prosecute or other good reason.

(d) The Chairman or such other Commission designee, in his or her discretion, may consolidate any separate proceedings, or sever any consolidated proceedings whenever necessary to avoid unnecessary costs or delay or to effectuate the purposes of the Act.

### **19:18-3.4 Answer**

(a) Within 20 days from the service of the petition, the respondent shall file an answer.

(b) The answer shall specifically admit, deny or explain each of the allegations set forth in the petition, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.

(c) All allegations in the petition, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown.

(d) The answer shall include a specific factual rebuttal to the petition, accompanied by all supporting documents and affidavits.

(e) The answer shall also include a statement of facts constituting any affirmative defense.

(f) The answer shall be in writing and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person signing it: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

#### **19:18-3.5 Where to file; number of copies; service**

An original and nine copies of the answer shall be filed with the Commission together with proof of service of a copy of the answer on the petitioner and any intervenor.

#### **19:18-3.6 Amendment**

The Chairman of the Commission or such other Commission designee may permit the respondent to amend its answer at any time upon such terms as may be deemed just.

#### **19:18-3.7 Reply**

Within five days of receipt of the answer, the petitioner may file an original and nine copies of a reply and any supporting documents and affidavits together with proof of service of a copy of the reply on the respondent and any intervenor. No further replies shall be permitted without permission of the Chairman or such other Commission designee.

#### **19:18-3.8 Request for evidentiary hearing**

(a) Any party desiring an evidentiary hearing shall file with the Commission an original and nine copies of a request therefor, together with proof of service of a copy of the request on the other party. The petitioner shall file such a request no later than five days from receipt of the respondent's answer. The respondent shall file such a request no later than five days from the date a reply is due. Failure to file a timely request for an evidentiary hearing shall constitute a waiver of any claim to such hearing. Any such request shall set forth in detail the specific factual issues which the requesting party contends necessitate an evidentiary hearing and shall explain why these issues are substantial and material. Factual allegations not raised shall be deemed to be undisputed for purposes of determining whether there shall be an evidentiary hearing.

(b) Within five days of receipt of a request for a hearing, the other party shall file with the Commission an original and nine copies of a written response, together with proof of service of a copy of the response on the requesting party. The response shall specifically reply to each factual issue alleged to be in dispute by the requesting party and shall also state what, if any, additional factual issues not raised by the requesting party are alleged to be in dispute. Any factual issue not specifically responded to or raised in the response shall be deemed to be undisputed for purposes of determining whether there shall be an evidentiary hearing.

(c) The request for an evidentiary hearing and the response, together with the petition, the answer and any reply, shall constitute the pleadings for the evidentiary hearing.

### **19:18-3.9 Briefs**

(a) In the absence of a hearing, the Chairman or such other Commission designee shall notify each party that it has 14 days from the date of notification to file an original and nine copies of a supporting brief, with proof of service of a copy of such brief on the other party.

(b) Within seven days after receipt of the initial brief, each party may file with the Commission an original and nine copies of a reply brief, together with proof of service of a copy of such brief on the other party. No other briefs shall be served or filed without leave of the Chairman or such other Commission designee.

(c) The Chairman or such other Commission designee, in his or her discretion, may grant written requests for extensions of time within which to file briefs. Such request shall set forth the reasons for the request and the position of the other party regarding the requested extension.

### **19:18-3.10 Evidentiary hearings; motions**

(a) If, following receipt of a timely request for an evidentiary hearing and a response pursuant to N.J.A.C. 19:18-3.8, or after determination without a request, it appears to the Chairman or such other Commission designee that there are substantial and material disputed factual issues, a notice of hearing shall be issued setting forth the time and place for the evidentiary hearing. The Chairman or such other Commission designee shall appoint a hearing examiner to conduct such hearing.

(b) Any motions filed pursuant to this subchapter shall be governed by the provisions of N.J.A.C. 19:14-4.1 through 19:14-4.8 on unfair practice proceedings, insofar as applicable.

(c) Any evidentiary hearing conducted pursuant to this subchapter shall be governed by the provisions of N.J.A.C. 19:14-6.1 through 19:14-6.13 on unfair practice proceedings, insofar as applicable.

(d) After the evidentiary hearing, or upon the parties' consent before the conclusion of the evidentiary hearing, the hearing examiner shall prepare a report and recommended decision which shall contain findings of fact, conclusions of law, and recommendations as to the disposition of the case. The hearing examiner shall file the original with the Commission, and shall serve a copy on the parties. Upon service on the parties, which shall be complete upon mailing, the case shall be deemed transferred to the Commission.

#### **19:18-3.11 Record before the Commission; exceptions; cross-exceptions**

The record before the Commission after a hearing shall consist of the petition for contested transfer determination, the answer and any replies, the request for evidentiary hearing and any replies, the notice of hearing, any official transcript of the evidentiary hearing, stipulations, exhibits, documentary evidence, and depositions, together with the hearing examiner's report and any exceptions, cross-exceptions, briefs, and answering briefs, which shall be governed by the provisions of N.J.A.C. 19:14-7.3 (Exceptions; cross-exceptions; briefs; answering briefs).

#### **19:18-3.12 Oral argument**

Proceedings under this chapter shall be submitted for the Commission's consideration without argument unless ordered by the Chairman or such other Commission designee. Requests for oral argument shall be filed by any party along with its initial brief, or where a hearing has been conducted, along with its exceptions or cross-exceptions. Such request shall be made by a separate paper, an original and two copies of which shall be filed with the Commission, together with proof of service of a copy of such request on the other party. The Chairman or such other Commission designee shall notify the parties of the assigned argument date, if permission to argue orally is granted. The Commission may terminate any argument permitted at any time it deems the issues adequately argued.

#### **19:18-3.13 Final determination; decisions in the absence of exceptions**

Based on the parties' submissions and any oral argument, or where an evidentiary hearing has been conducted, based on the record in the case as set forth in N.J.A.C. 19:18-3.11 and any oral argument, the Commission or its designee shall issue and serve on the parties its findings of fact and conclusions of law, including its determination as to whether the basis of the disputed transfer was predominantly disciplinary, and may take reasonable action to effectuate the purposes of the Act. If no exceptions are filed, the recommended decision shall

become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

#### **19:18-3.14 Motion for reconsideration**

After the decision of the Commission or its designee, a motion for reconsideration may be filed in accordance with the provisions of N.J.A.C. 19:14-8.4 (Motion for reconsideration).

#### **19:18-3.15 Interim relief**

Upon the filing of a petition, the petitioner may apply to the Commission for an order requesting the respondent to show cause why specified interim relief should not be granted pending the disposition of the proceeding. Such a request shall be governed by the provisions of N.J.A.C. 19:14-9.1 through 9.5 on unfair practice proceedings, insofar as applicable.

## **CHAPTER 19**

### **PAYROLL DEDUCTION DETERMINATIONS--REPRESENTATION FEES**

#### **Authority**

N.J.S.A. 34:13A-5.9.

#### **Source and Effective Date**

effective March 3, 2003.

Executive Order No. 66(1978) Expiration Date

Chapter 19, Payroll Deduction Determinations--Representation Fees, expires on March 3, 2008.

### **SUBCHAPTER 1. NATURE OF PROCEEDINGS**

#### **19:19-1.1 Nature of proceedings**

(a) N.J.S.A. 34:13A-5.5 requires negotiations over the subject of requiring employees in a negotiations unit who are not members of their majority representative to pay a representation fee in lieu of dues to their majority representative. As amended by P.L. 2002, c. 46, effective August 1, 2002, that section permits the majority representative to petition the Commission to conduct an investigation if no agreement for representation fees in lieu of dues by payroll deduction is reached during negotiations. If the Commission determines that a majority of the negotiations unit employees are voluntary dues paying members of the majority representative and that the majority representative maintains a demand and return system as required by N.J.S.A. 34:13A-5.5(c) and 5.6, the Commission shall order the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the negotiations unit employees who are not members of the majority representative.

(b) These procedures are intended to avoid protracted administrative litigation. Proceedings seeking payroll deductions of representation fees will normally lend themselves to expeditious disposition on the basis of the parties' submissions, which these procedures are intended to accommodate.

### **SUBCHAPTER 2. INITIATION OF PROCEEDINGS**

#### **19:19-2.1 Who may file**

Only the majority representative may petition for a payroll deduction determination. The majority representative must file an original and four copies of a petition for payroll deduction determination, together with a proof of service of a copy of the petition on the employer. A copy of each petition shall be retained in a public docket until the case is closed.

#### **19:19-2.2 Contents of petition for payroll deduction determination**

(a) A petition for payroll deduction determination shall:

1. Specify the full name, address, and telephone number of the petitioning majority representative;
  2. Specify the full name, address and telephone number of the employer;
  3. Specify that the petitioner and the employer have negotiated concerning the subject of representation fees in lieu of dues and that no agreement requiring such payments has been reached;
  4. Specify the collective negotiations unit description and the number of employees in the unit represented by the petitioner, and attach any pertinent certification of majority representative issued by the Commission or recognition agreement executed by the employer or recognition clause contained in the parties' current or most recent collective negotiations agreement;
  5. List the employees in the negotiations unit who are voluntary dues paying members of the majority representative as of the time of the filing of the petition, and attach any documents pertinent to verifying that list; and
  6. Provide a written copy of the demand and return system, as required by N.J.A.C. 19:17-3.3(a), to be used by the majority representative if payroll deductions are ordered.
- (b) A petition shall be in writing and the representative of the party filing the petition shall make this dated and signed certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief."

### **SUBCHAPTER 3. PROCEDURE**

#### **19:19-3.1 Amendment; withdrawal; dismissal; consolidation**

- (a) The Chairman or such other Commission designee may permit the petitioner to amend the petition at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended petition shall conform to the provisions of these rules relating to the original petition for payroll deduction determination.
- (b) A petition for payroll deduction determination shall be dismissed and the case closed if the petitioner files a notice of withdrawal. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.
- (c) The Chairman or such other Commission designee, in his or her discretion, may dismiss the petition on the grounds of insufficient cause for determination, failure to prosecute, or other good reason.

#### **19:19-3.2 Response**

- (a) Within 10 days from receiving service of the petition, the respondent employer shall file a response. The response shall:



1. Specify whether the petitioner and the employer have negotiated concerning the subject of representation fees in lieu of dues and whether an agreement requiring such payments has been reached;

2. Specify the collective negotiations unit description and the number of employees in the unit represented by the petitioner, and attach any documents pertinent to defining the collective negotiations unit and not already supplied by the petitioner;

3. Provide a list of all the employees in the negotiations unit, together with their job titles, as of the time of the filing of the petition;

4. Verify or correct where possible the list of the negotiations unit employees who are voluntary dues paying members of the majority representative as of the time of the filing of the petition and attach any documents pertinent to establishing such a list and not already supplied by the petitioner; and

5. State any other facts which the respondent believes are material to a payroll deduction determination.

(b) If no response is filed, all allegations in the petition shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown. This mandate also applies to any allegation not specifically denied or explained in a response, unless the respondent states that it is without knowledge of the allegation.

(c) The response shall be in writing and the representative of the party filing the response shall make this dated and signed certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief."

### **19:19-3.3      Where to file; number of copies; service**

An original and four copies of the response shall be filed with the Commission, together with proof of service of a copy of the response on the petitioner.

### **19:19-3.4      Amendment to response**

The Chairman of the Commission or such other Commission designee may permit the respondent to amend its response at any time upon such terms as may be deemed just.

### **19:19-3.5      Reply**

Within five days of receipt of the response, the petitioner may file an original and four copies of a reply and any supporting documents and affidavits together with proof of service of a copy of the reply on the respondent. No further replies shall be permitted without permission of the Chairman or such other Commission designee.

### **19:19-3.6 Investigation; disposition**

(a) A Commission designee shall conduct an investigation. The designee may ask the parties to attend informal conferences and to submit additional documents, statements of position, or briefs on material legal issues.

(b) In addition, the designee may hold a hearing if it appears that there are substantial and material factual issues requiring a hearing to resolve. Such a hearing shall be governed by the provisions of N.J.A.C. 19:11-6 on representation proceedings, insofar as applicable.

(c) After the investigation or hearing, the designee shall issue written findings as to whether a majority of the negotiations unit employees are voluntary dues paying members of the majority representative and whether the majority representative maintains a demand and return system as required by N.J.S.A. 34:13A-5.5 and 5.6 and either:

1. Request the petitioner to withdraw the petition, or in the absence of withdrawal, dismiss the petition, pursuant to N.J.A.C. 19:19-3.2;

2. Order the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the negotiations unit employees who are not members of the majority representative; or

3. Take other measures the designee deems appropriate.

## **SUBCHAPTER 4. REQUEST FOR COMMISSION REVIEW**

### **19:19-4.1 Request for Commission review**

(a) Within 10 days of service on it of the designee's order, any aggrieved party may file a request for review with the Commission.

(b) An original and nine copies of a request for review shall be filed with the Commission, together with proof of service of a copy on the other party. The filing of a request for review with the Commission shall not operate, unless otherwise ordered by the Commission, as a stay of any action taken, ordered or directed by the designee.

### **19:19-4.2 Grounds for granting a request for review**

(a) The Chairman may grant a request for review. A request for review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;

2. The designee's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

#### **19:19-4.3      Contents of request for review; timely presentment of facts**

- (a) A request for review must be a self-contained document enabling the Commission or Chairman to rule on the basis of its contents.
- (b) A request must contain a summary of all evidence and rulings bearing on the issues, together with page citations from any official transcript, and a summary of argument.
- (c) A request may not raise any issue or allege any facts not timely presented to the designee, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented.
- (d) A request for review must specify both the grounds supporting review and address the merits of the issues for which relief is sought.

#### **19:19-4.4      Statement in opposition to a request for review**

Within seven days of service on it of a request for review, any party may file with the Commission an original and nine copies of a statement in opposition to the request, together with proof of service of a copy on all other parties.

#### **19:19-4.5      Waiver of right to request review**

- (a) The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any Commission proceeding, any issue that was or could have been raised in the proceeding.
- (b) A Commission order disposing of a case in its entirety, or a Commission order denying a request for review of an order issued by the Commission designee disposing of a case in its entirety, shall constitute the final administrative determination of the Commission.

#### **19:19-4.6      Stay of decision; record before the Commission; withdrawal**

- (a) The granting of a request for review shall not stay the designee's decision unless otherwise ordered by the Commission.
- (b) Where review has been granted, the Commission will consider the entire record in light of the

grounds relied on for review.

(c) Any request for review may be withdrawn with the permission of the Commission before issuance of a Commission decision.

#### **19:19-4.7 Oral argument**

Any request for oral argument before the Commission shall be in writing on a separate piece of paper and filed simultaneously with the request for review. The Commission shall notify the parties if the request for oral argument is granted and of the time and place of any oral argument.

#### **19:19-4.8 Decision by the Commission**

Where review has been granted, the Commission shall proceed upon the record to decide the issues referred to it or to review the decision of the designee. It shall affirm or reverse the decision of the designee, in whole or in part, or make such other disposition of the matter as it deems appropriate.

### **SUBCHAPTER 5. TRANSFER TO THE COMMISSION; RECONSIDERATION**

#### **19:19-5.1 Transfer to the Commission on its own motion**

The Commission may, at any time and on its own motion, transfer a case to itself for appropriate action.

#### **19:19-5.2 Motion for Commission reconsideration**

A party may move for reconsideration of a Commission decision. The movant shall specify the extraordinary circumstances warranting reconsideration and the pages of the record it relies on. Any motion pursuant to this section shall be filed within 15 days of service of the Commission decision, together with proof of service of a copy on all other parties. Any party opposing reconsideration may file a response within five days of service on it of the motion, together with proof of service of a copy on all other parties. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Commission decision, unless otherwise ordered by the Commission. A motion for reconsideration need not be filed to exhaust administrative remedies.